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Guiding Principles on Statutory Revision

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THE multiplicity and conflict of legislation, both national and state, is a subject for serious thought and consideration. Not only should the judiciary, members of legislative bodies, and the legal fraternity, meditate over this important subject, but merchants, manufacturers, and the general public should study the matter and apply more thought and attention in the future, before securing the passage of an act to cure some desired evil.

Statutory revision should never be attempted unless the change is for improvement of existing conditions. Selfish interests of class or individual should never dominate the birth of a new law or the change of an old one.

The most important ingredient, therefore, for amended or new legislation should be *necessity*. By this, I do not mean an exigency to be ameliorated for the benefit of the sponsor or the draftsman of a bill, or what might be termed his clients or individual constituency.

The welfare of the commonwealth or the nation should be considered before the improvident enactment of legislation.

The Adamson Bill is a most striking illustration of hasty legislation. Without going into the merits or demerits of the question at issue, the bill itself, drawn without the careful consideration and draftsmanship that should be given to all acts of Congress, has demonstrated the necessity for more preparation before presentation and enactment into law by a legislative body.

Some critics might reply that the exigency existed for the passage of the Adamson Bill in that it prevented a general strike; but surely, the welfare of the country, after the menace of a strike had been dissipated, is not insured by the passage of an act such as this.

We can scan acts of assembly and records of Congress for years back, and, going carefully through the reports, find that legislation has been ground out like grist in the mill. Quantity rather than quality has been the guiding star, and necessity, duplication, or constitutionality has been discarded too often in the mad rush for the honor (?) to be the first to father or sponsor a bill to correct a so-called evil which some element in the nation or state claims unjust, restrictive, or needful of reform.

It might be well to hesitate, and ask, "What is law?" Blackstone has said: "Law is a rule of civil conduct prescribed

by the supreme power in a state, commanding what is right and prohibiting what is wrong."

Oftentimes such a definition under the maze of legislation would become so confused that only a trained lawyer could segregate the wheat from the chaff, and apply a strict interpretation to many legal monstrosities which in common sense and ordinary application mean nothing to a layman. But even a lawyer becomes dazed and impotent in the face of present-day lawmaking. Sir Frederick Pollock has said: "The greater have been a lawyer's opportunities of knowledge and the more time he has given to the study of legal principles, the greater will be his hesitation in face of the apparently simple question, What is law?" It has been questioned if it would not be most expeditious to adjourn Congress and all of the legislatures for four or six years, and allow the present acts and statutes to become understood before enacting new ones. Business would undoubtedly benefit by it, and the legal profession and judiciary might have an opportunity of catching up with the plethora of legislation which has been flooding the country.

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Of course, modern conditions necessitate modern laws. The introduction of the automobile, the aeroplane, the electric railroad, wireless telegraphy, and modern inventions of many kinds have called forth legislation, both criminal and civil.

Blackstone refers to law as "the perfection of reason, that is, always intended to conform thereto, and that what is not reason is not law."

But the modern-day revision of law and the application of legal principles often goes far beyond any reasonable interpretation of necessity, and beyond the signification of reason itself. Perhaps the definition of James C. Carter that "law is the rule of conduct which society has determined must be enforced" is the leading principle which guides many, either in proposing legislation, securing its passage, or enforcing it. Public clamor or class should never dominate proposed legislation. Then, again, we find the claim that our judiciary is making law. That judges make law is true, and despite the propoganda for the recall of judicial decisions, to be submitted to the will of society or public approval, the attempt to curtail and restrict our judges died a natural death, which was proper. Our judiciary are mostly trained lawyers who gather their experience from day to day. They usually decide without consideration of class, creed, or social distinction. It is right, therefore, that they should be empowered to make law, particularly in the face of the conflict and abuse in modern legislation.

This is a grave responsibility, but they should not shirk it; and the decisions of our courts stand to-day as both substantial law and revisionary law, the statutes to the contrary notwithstanding.

New law at the hands of the judiciary takes into consideration statutory enactment, constitutional inhibition, reason, and common sense.

When the judiciary trangresses in the making of law to such an extent that it appears improvident or oppressive, redress can be had from the legislative body to correct it.

To give a concrete instance of such procedure, we could refer to the Pennsylvania statute which secures to defendants in criminal cases the privilege of refusing to testify against themselves with regard to former conviction for crime. District attorneys evaded this statute by inquiring of a defendant where he had been living during the period of a prior incarceration. Of course, this brought to the knowledge of a jury the fact of a previous conviction. The supreme court of Pennsylvania went so far in Com. v. Racco, 225 Pa. 113, 133 Am. St. Rep. 872, 73 Atl. 1067, as to uphold such conduct on the part of district attorneys. Consequently, the act of March 15, 1911, P. L. 20, was enacted to cure this evil, and to protect defendants from any further violation of their rights. This act prohibited the asking of any questions which would tend to show that, prior to the trial then proceeding, a defendant had been charged with or convicted of any other offense than the one on trial, unless questions were asked of witnesses for the prosecution with a view to establish his own good character or reputation, or he had given evidence tending to prove his own good character or reputation, or he shall have testified at such trial against a codefendant charged with the same offense.

The above legislation was founded upon a necessity which demanded a revision of existing conditions brought about both by statutory enactment which had been not clearly followed, and by judicial interpretation thereof, which had misconstrued the original intention of law which had been made for protection of defendants.

So, we might cite other instances which arise from time to time where necessity requires revision.

But there is also the "freak" class of legislation, such as regulation of the length of sheets on beds; or where a fire occurs within 3 miles of a railroad, and the burden of proof is shifted to the railroad to disprove that it was responsible for the fire; or defining the word "sausage;" or making it a criminal offense to peep in one's window.

These make a mockery of law, and are a travesty on justice and common sense.

The inspiration for this appears to be, that every member of a lawmaking body believes himself endowed from on High, with a mission to revise the law, and he gathers from every quarter suggestions for change. These he hastily drafts, and seldom submits to a legislative reference bureau (which could properly draft his act, or discard it as unnecessary). Then it is just as carelessly introduced, referred to committee, reported back to the legislative body, and enacted into law. Sometimes an alert member will discover the ridiculous nature of the act, and it dies quietly by the roadside. Again, an efficient attorney general will ferret out this unnecessary legislation, and see that the governor vetoes it. But too much of "gallery playing" legislation has passed through our legislative bodies.

If some discerning and ambitious legislator would carefully scan the archives of legislation and segregate the unnecessary, improvident, and ridiculous statutes from the records, and have them repealed, he would confer a great blessing on humanity in every state in the Union.

Civil law and penal law should, therefore, be brought up to a status of fairness, equity, and necessity required by modern conditions, and all other attempts at statutory revision (for the present at least) should be prohibited.

It is hoped, therefore, that the pending sessions of Congress and of the many legislatures will find the members imbued with a true patriotism and an unselfish desire to place the laws of the Union and states on such a plane that there shall be no criticism such as has been leveled at modern legislation in the past few decades.

Edwin M. Abbott.

Photo by Boston Photo News Co., Boston, Mass.
THE PARLIAMENT BUILDING AT BERLIN.

The Reichstag

BY FRED H. PETERSON

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ALMOST unique legislative body is the Reichstag. Under the German Constitution, art. IV. § 13, "general legislation as to the whole domain of civil and criminal law, and of judicial procedure" is vested in the Bundesrat and the Reichstag.

By analogy we class these bodies with our Senate and House of Representatives; which, in a general sense, is correct; in detail there is such divergency that comparison fails. The Bundesrat is the Federal Council, whose members are appointed by the sovereigns of the 25 respective states, and the senates of the three Republics—free cities—representing their particular state much like ambassadors to a foreign court; for the Constitution provides that each state "may appoint as many plenipotentiaries to the Bundesrat as it has votes," but a state must vote as a unit, and the Kaiser must guarantee the members diplomatic protection. Their term of office is at the pleasure of the appointing power. Our Senate represents the sovereignty of the states, for it is a Senate of the United States. The House of Representatives is of local representation, and is, therefore, nearest to the people, representing them in their sovereign capacity.

The Reichstag, however, although elected locally, is theoretically the representative of all the people of the Empire; that is, it represents the Empire as a whole. Any man twenty-five years of age, a citizen of the Empire, may be elected to the Reichstag if a resident of the district from which elected, although not a citizen of the state. Formerly there was no salary, but since 1906 the pay is $750 annually, and free transportation is

granted for eight days preceding, during, and for eight days after, a session of the Reichstag; but for absence there is a deduction of $7.50 a day.

The last election occurred in February, 1912; consequently, unless sooner dissolved, the next election will be in 1917, but I am informed that in some manner it was postponed for two years. The Reichstag elects a president, who has no vote, and in case of a tie cannot determine the result; a secretary is chosen for each session. Dr. Johannes Kaempf is now president; he became a member in 1903 and has served ever since. For years he was an alderman in Berlin; he is seventy-three years old, but vigorous and highly respected. In that regard Germany is adhering to her theory,—old men for counsel, young men for war."

Both bodies must convene annually. The Bundesrat may meet at any time, but the Reichstag can only hold a session when the Bundesrat is sitting. The latter meets in secret, while the Constitution requires the Reichstag to transact its business in public; but under a standing order by direction of the president or on motion of ten members, a secret session may be held. This order is considered illegal by German jurists.

The political composition of the Reichstag is a curious puzzle to foreigners. Our Congress is generally composed of members of the two great parties, who are usually about equally divided, and whose numerical superiority shifts frequently. The politics of the Empire is represented in the Reichstag by at least ten parties,—the Center, Conservatives, Social Democrats, Liberals, Radicals, Poles, Guelfs, Danes, Independents, and others. There are 397 members of whom the Social Democrats hold the largest representation. This party in 1903 elected 79 members; in 1907 they returned only 43, but in 1912 their number increased to 110. It became the most powerful party numerically; the Center Party, formerly the largest, fell to second place with 90 members. Space will not permit a political discussion of the Reichstag, nor is this article intended for that purpose; but the Social Democrats, by reason of their rapid increase and consequent power as an element in legislation, have caused serious thought to the governing officials.

However, in this country the view is quite often expressed that the Social Democrats represent the ideals and vagaries of so-called "Socialists." This is due to a misunderstanding arising out of a similarity of names. Although nominally a revolutionary party, yet its organization is very orderly, and its economic policies and political tenets are so reasonable that the party is supported by many who do not bear its name.

They have abandoned the idea of doing things by one grand *coup*, but are content to labor for such results as are reasonably attainable. The party is governed by a

political congress of six delegates from each electoral district in the Empire, the socialist members of the Reichstag, and the executive committee. They meet annually to determine policies and to outline a feasible plan for legislation. Karl Marx is considered the founder; their proposed program embraced, among others, the abolition of class government and class distinction; in fact, all classes, including of course the nobility and royalty; to terminate the exploitation of labor and oppression of men; to destroy capitalism; to establish and promote an economic régime under which the production and distribution of goods is regulated and controlled exclusively by the state; to abolish plural voting; and to permit equal opportunity, without regard to social standing in the universities, the Army, and Navy. Marx died in 1883, but his theories were advocated by Bernstein, who attempted to revise the doctrines of Marx, and so became a leader of the "Revisionists." Herr Bebel acquired leadership, but he died in August, 1913; then Liebknecht became the accredited head; at present Philip Scheidemann is their spokesman.

Photograph, Underwood & Underwood, N. Y.

The importance of the Social Democrats may be realized from the fact that they cast more than one third of the national vote; to wit, 4,238,419 votes. But the old system of election districts allows the Social Democrats only 110 votes, instead of 132, under a proper apportionment. In Berlin, where Socialism is strong, there are 345,000 voters in each district; while in conservative East Prussia 121,000 voters elect a member of the Reichstag.

Since 1871 there has been no redistricting, and as urban centers are inclined to return socialists, reapportionment is not favored by the government. Prussia is entitled to 236 members and controls the Reichstag; but Prussia appoints 17 delegates to the Bundesrat, and as the Constitution cannot be amended if 14 members object, it follows that Prussia is the dominating power. It will be readily seen that legislation is largely influenced by the Social Democrats, just as we expect legislation from Congress in line with the principles of the majority party. To this large socialistic vote may be traced the various activities of the state in providing for the laboring classes; such as, the industrial insurance laws and courts, protection against personal injury, insurance against nonemployment and illness, old-age pensions, and the like.

Bismarck fought this party persistently, but finally conceded many of their demands, and these laws have become the basis of modern German industrial life. The Reichstag has, therefore, had a large and controlling influence in the enactment of laws particularly favoring the industrial classes. Thus, the extreme individualism of the Roman law was superseded by statutes more in harmony with the modern social spirit. No doubt, the Reichstag largely influenced the enactment of legal principles, some of which might be profitably incorporated with our jurisprudence; for instance, the state is

held liable for the acts and wrongs of its officials; the exercise of a right is not permitted where there can be no other purpose than to inflict injury upon another; if anyone wilfully injures another in a manner contrary to the common standard of right, he is liable in damages; the doctrine of comparative fault; and the nonliability for breach of marriage promise.

It may seem strange there should be so many parties, such as Anti-Semitic, Alsatian, Economic Union, and the like; but if we read our history, we discover practically the same thing; for we have had Loco-Focos, Anti-Masonic, and Greenbackers, temporarily representing some political fads.

Now, as to the legislation effected through the Reichstag; as all legislative power is vested in both bodies jointly, a majority of the votes in each is necessary for the enactment of a law. Discussion may proceed in the absence of a quorum, but no authoritative act can be carried, unless there be present a majority of the whole membership; but under the Constitution "the Reichstag has the right to propose laws within the jurisdiction of the Empire."

The Constitution permits the Reichstag to initiate legislation; in practice this is generally done by the Bundesrat. Every bill before it becomes a law must finally pass the Bundesrat, no matter where the origin. Thus, if a bill originates in the Bundesrat, and the Reichstag consents without amendment, it must again pass the former for final determination. Then it is sent to the Emperor; for art. XVII. of the Constitution says: "It is the business of the Kaiser to engross and publish the imperial laws" and supervise their enforcement.

The constitutionality and validity of an act is determined before its engrossment (Ausfertigung). If deemed unconstitutional, that is, if not passed according to the Constitution, or if in conflict therewith, the bill cannot be engrossed. If the bill is engrossed, the Emperor affirms its constitutionality and validity in every respect, and these questions are finally settled. The Emperor has no direct veto power, but by consenting to or withholding engrossment, he in effect controls legislation. Theoretically, he cannot refuse engrossment except the proposed law be unconstitutional.

Should the Reichstag and Bundesrat be at loggerheads, the Constitution provides a remedy. Art. XXIV. The Reichstag may be dissolved by resolution of the Bundesrat with the consent of the Kaiser. Within sixty days after such dissolution, an election must be called; when a Reichstag is dissolved the newly elected Reichstag convenes within ninety days; the members hold office for five years from the date of such election.

According to the German system the constitutionality of an act is determined before it becomes a law. They claim advantages in that any law once on the books is valid; that it is the business of the government to determine the constitutionality of a law before adoption, and that the expense of such determination should not be placed upon a citizen; that it makes for certainty of law, and all laws are equally obeyed and respected.

Since the days of Marbury v. Madison, 1 Cranch, 137, 2 L. ed. 60, we have been educated to the American system, and, of course, see little merit in the German method, but their reasons are not frivolous. For illustration, take Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, where the Supreme Court held the income tax law valid by a five to four vote. Presently, one of the judges changed his mind, then the law was void on a basis of five to four opinion. Hepburn v. Griswold, 8 Wall. 603, 19 L. ed. 513, decided in 1870 by Chief Justice Chase, held the statute making greenbacks legal tender, void, by a four to three opinion. Then Congress added one judge, and another was appointed to fill a vacancy. In that manner, when Legal Tender Cases, 12 Wall. 457, 20 L. ed. 289, brought the same question before the court in 1871, Hepburn v. Griswold was squarely overruled, on a five to four opinion; Judge Strong wrote the decision.

Recently, the Adamson act provides for an eight-hour law in railway service. The presidents of large railway corporations have announced through the press that they consider the act void, and will

not abide by it, unless the United States Supreme Court upholds the law.

Congress just passed the Federal farm loan act; Senator Walsh, of Montana, in an able discussion, has demonstrated its constitutionality, and gives his reason for publishing his views, as follows: "If any serious doubt of the constitutionality of the measure as a whole, or the validity of the important tax exemption privilege, should be aroused, the success of the system, in a critical period of its infancy, would be imperiled." See 83 Cent. L. J. 355.

The supreme court of Washington recently took advanced ground on this question. They held, if an act was invalid when passed, although the vice continues and the statute might be annulled at any time, yet that they would not apply this doctrine to political or administrative legislation, unless such laws were attacked in seasonable time, without delay. State v. Howell, 159 Pac. 777, thereby establishing the doctrine that what was once void becomes valid by lapse of time, although unconstitutional. Surely, these illustrations from our experience on the subject show that the German system has some merit.

The members of the Reichstag represent the whole people; are not bound by any orders or instructions, for so the Constitution directs, while the delegates to the Bundesrat must obey the express wishes of the state from which appointed. Members of the Reichstag enjoy privileges and exemptions from process and arrest much like members of Congress.

In conclusion I may remark that every nation must work out its own problems; what may be appropriate and suitable to one people may not do for another. The ultimate results obtained are surprisingly alike in all countries, for the fundamental principles of right and wrong in legislation are universal.

The Reichstag has rendered great service to the Empire; it is the palladium of the common people, where their rights are publicly discussed, their wants made known, and their grievances brought before the world. It has performed its full part in guarding the liberties of the citizen against encroachment; through intelligent discussion has enlightened public opinion, and thereby largely contributed towards the greatness of a nation of which a distinguished writer has said:

"Among the political achievements of the past hundred years, few exceed in importance, and none surpass in interest, the creation of the present German Empire."

Fred H. Peterson

A Legislative Aid

The Work and Functions of the Legislative Reference Bureau of Illinois

BY FINLEY F. BELL

Secretary of the Bureau

THE common practice of heaping blame upon the shoulders of the law makers for most of the evils in government affairs exists, perhaps, with as much intensity in Illinois as elsewhere. Seldom is praise given to the general assembly for the constructive and beneficient legislation enacted, but never is an occasion overlooked to censure it for what the public construes as legislative misdeeds.

Two years ago in the Illinois legislature there were 1,500 bills and resolutions introduced; these measures were supposed to be considered by the two branches of the legislature in about 100 calendar days, or, perhaps, 25 real working days. Similar conditions seem to obtain in most of the states and at Washington, where the sessions are longer, but the bills introduced run up into the tens of thousands. Proper consideration of these proposed laws is physically impossible under such circumstances; and while there are many duplicate bills and measures of minor importance, the real wonder is how such a good legislative product is secured.

The personnel of the several legislatures has also been found fault with, and complaint made that men who do not possess high intellectual qualities and who may be somewhat remiss in moral standards occasionally are seated and ofttimes chosen from cultured sections of the state. The fact that we live under a representative form of government is largely overlooked by those who find fault, and both good and bad are condemned with the general criticism, which does not in any way help matters, but rather causes the public to lose faith in the lawmakers, and to exercise little concern in the affairs of government.

It is a regrettable fact that the ordinary citizen is concerned with the selection of public servants for only a few days prior to an election, and manifests little interest in the conduct of his representatives thereafter, except by way of occasional censure. In recent years the general public has shown considerable improvement in this regard, and the press has done much to eliminate the nefarious practices that formerly existed; consequently, a better interest in public affairs prevails. Those acquainted with legislative conditions realize that the individual member is not so much at fault; that much of the blame should be placed on the system, and most of it on the public itself, since if the citizens remain supine and fail to arouse themselves, even when their liberty is in jeopardy, they can expect but little relief, and should shoulder the most of the blame. The personnel of the Illinois legislature measures up to as high a standard as can be found in any other commonwealth. Generally speaking, members of the several legislatures are representative of the people that elect them, and this is as it should be; only when community standards are raised will the selection of representatives be improved.

In some of the states, there can be found on the statute books hundreds of useless laws, many of which contain provisions that are unenforceable; others have never been tested in the courts, and, should they be, would be held void. Even the laws that have been held constitutional are in many instances so drafted that they are not enforced, and such a condition tends to create disrespect for all law and authority.

Two years hence Illinois will celebrate the centennial of its admission to statehood, and in that century of time the basic law has been twice changed. We have had three Constitutions, and there is at present considerable agitation for still another. The decisions of the supreme court are encompassed in nearly 300 separate volumes, and the work of the courts of other states is correspondingly as large. These many thousands of decisions were probably rendered after much deliberation, with precedents to follow and an acquaintance with well-established customs acquired after years of experience. This should insure for the judicial product much respect. Perhaps most of the time and labor of the courts was required to cull out the bad timber that was the result of hastily drawn and ill-considered legislation on the part of the legislature, which had not time for proper consideration of bills, and was further handicapped by unfamiliarity with previous enactments, and by slight acquaintance with the very conditions they sought to remedy. Recently a movement which has been given much approval, commonly known as the legislative reference idea, has proved of great value to the lawmakers. Ex-President Taft recommended the establishment of such a bureau in connection with the Library of Congress, and in several states bureaus have been created with varying powers and functions. All have proved a great help to the legislatures.

Finley F. Bell

Some of these bureaus are administered by separate agencies, and others are under the jurisdiction of state libraries. The latter have had but little opportunity to demonstrate their value, but enough has been accomplished to insure their development and make them of real value. Many municipalities have established bureaus that are helpful to councilmen and the city officials. The Illinois bureau was created three years ago. It consists of the governor as chairman ex-officio and the chairman of the appropriation and judiciary committees of both houses. The bureau elects a secretary, who is the officer in charge of the bureau, and to him is given a corps of assistants consisting of legal aids, bill drafters, accountants, research assistants, etc. The present secretary organized the Illinois bureau. It is believed to be the equal of any in the country. The bureau has *four functions to exercise*. It collects material on all subjects that may have legislative consideration. This, of course, is a very extensive field, and covers, perhaps, the whole range of the science of government. The matter, while varied and accumulated from many sources, is made compact in order to be of use to the busy members of the legislature. It consists principally of a complete collection of statute laws of the different states, the Federal Statutes, Federal and state court reports, the publications of the Federal government, especially of those departments that

publish matter of interest to the states, the census publications and their special reports, the various state documents, year books, indexes to periodicals, publications of the different universities including the studies of many other educational institutions. Magazines and periodicals that cover perhaps all but scientific subjects are subscribed for, as are newspapers from many sections of the country, which prove of invaluable aid. In the classification of this vast amount of material an attempt is made not to duplicate the material that can be found in local libraries. Much of the work is of a bibliographical nature. Reference lists on a great variety of subjects are being constantly compiled so that the bureau is kept in touch with the latest available material bearing on all subjects. It is as much concerned, if not more so, with where to find matter as it is interested in the possession of the material itself. Knowledge is of two kinds,—one to know a thing, and the other where to find it. To the latter, perhaps, the bureau's best energies are directed. Library methods are largely employed for indexing and cataloging material; still the bureau must not be considered a library, although its shelves indicate, in a sense, that it is. It is rather a select library. Its subject-matter is in but a small way historical. Its purpose is to reveal the present status of economic and legislative conditions. The information is supposed to cover the problems of the day, in order that legislative remedies may be found for their betterment. Consequently, the statutes of the different states are being constantly perused, their provisions are being analyzed, and comparative studies compiled that enable the legislature to secure, principally in digest form, the provisions of the different state laws on many matters.

The value of such work can perhaps be best appreciated when you consider that prior to the establishment of the bureau, if a lawmaker desired the laws of other states for comparative purposes or for copying their good features into the Illinois law, it would be his personal task to secure the information necessitating much research and requiring some study and perhaps considerable correspondence; and if his time was thus employed during a busy legislative session, even though his task might have merit, he would be absenting himself from duties that were perhaps of greater importance, and, on the other hand, those who did not apply themselves to such study and who could not for many reasons make such investigations were obliged to vote upon measures with which they had little acquaintance or little information as to what was sought to be accomplished, or the necessity of enactment. With the aid of the bureau, members can secure on a moment's notice, in somewhat capsule form, data on practically any subject. They can learn with little inquiry what states have enacted laws or considered legislation on the very matters in which they may be interested. They can ascertain from the reports on file in the bureau much information and desirable comment upon the operation of these laws. They can find out something of the conditions elsewhere, or know if the laws of other states are really applicable to Illinois conditions.

For many years Illinois has conducted many legislative investigations, some of which have proved of great value. Other states have done likewise, and the reports of these investigations have been studied by the bureau, and thus many unnecessary steps are saved to the members, especially the newly elected ones, who are ofttimes anxious to inquire into subjects that have been thoroughly investigated by preceding general assemblies. By keeping this information alive as it were, much duplication is avoided, which affords more time for the members to consider problems that may demand urgent attention. State reports, textbooks, proceedings of civic bodies, etc., are analyzed and the contents of the inner pages revealed. The legislature has little time to peruse large volumes, and it is idle to place before a busy lawmaker a large number of books. He is usually too occupied for reading, but if you can cite him certain portions of the material, he can make it usable indeed. Magazines are culled, and the articles bearing on the same subject can be found

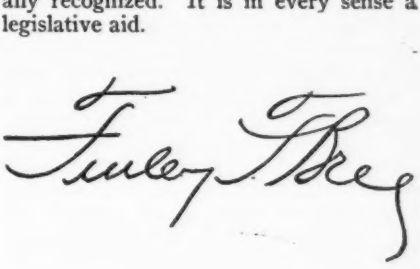
at one place in the bureau's collection,—thus inquirers are enabled to quickly choose what is desirable for their purpose, and they do not have to waste time consulting indexes and hunting through many books.

Not the least useful, by any means, are the newspaper clippings. The press heralds daily the current thought of the nation; and while the stories are sometimes tersely told, they nevertheless furnish an index to current events. The press is rightfully the thermometer of public opinion. Newspapers are not preserved in their entirety, they are too cumbersome; but especially designed pocket envelops are provided, and clippings are preserved and classified according to subject. Sometimes a newspaper item of a very few lines will afford just the information desired. This class of material is more or less of temporary value, but it serves a very useful purpose just the same.

The second function of the bureau is to digest all bills, resolutions, memorials, etc., indexed in either branch of the general assembly. It indexes the same and publishes weekly what is known as the "Legislative Digest," which shows the number, author, and the essential provisions of all measures. As the session proceeds, this work, which is cumulative, is kept indexed up to date and reveals the status of all bills. This enables every member to know the position of all measures and to easily locate them. Formerly, much confusion abounded, and members were more or less in the dark as to the purpose of much pending legislation. The digest enables them to learn the contents of all measures with but little effort. Comparisons of legislation that is being considered in other states is likewise afforded upon request, and the bureau is permitted, by reason of its excellent reciprocal relations with other bureaus, to furnish much information that individual members could hardly acquire by their own initiative.

The third function of the bureau is to prepare and submit to the general assembly when it convenes, a departmental estimate commonly denominated a "budget" of the fiscal requirements of all of the state departments, bureaus, boards, etc., for the period for which appropriations are to be made. This compilation of estimates which are tabulated according to a classification determined by the bureau, and includes, in addition to the requests which are compared with previous requests and appropriations, much data relative to the probable revenue of the state. Requests for "salaries and wages," "supplies," "material," "additions and betterments," are explained in much detail, and supporting statements as to the necessity for large expenditures, with architects' statements, etc., are included as a matter of information whenever possible to do so. This enables every member of the legislature to possess accurate information as to the state's fiscal condition in advance of the legislative session. Formerly these requests were obtained by the appropriations committee, with much labor and considerable dissatisfaction. The officers in charge of the state's eleemosynary institutions were obliged to forsake the care of the insane, and to spend much time waiting for a hearing before the appropriations committee. Of course, under the budget system, it is ofttimes necessary for these same officials to be heard and to make oral explanation as to their specific appropriations; but having the information tabulated in advance, it is only necessary for them to come when explanations are in order, and, with the development of the system, there will be less cause for these explanations and little need for inquiry. Of course the present system is by no means perfect, but the movement so far has given a decided impetus to the growing demand for uniform accountancy, business standards, and efficient administration. It is generally conceded that the present budget system is a distinct step forward. Its preparation may not properly be the function of a reference bureau, but where its composition is the same as that of the Illinois bureau, it has many desirable advantages. There are no powers or recommendations given the bureau either in the matter of budget preparation, or in the exercise of its other functions.

The fourth function of the bureau is to assist in the preparation of bills, memorials, etc. It conducts a bill-drafting department where members apply and have their measures prepared according to their dictation. The bureau arranges the matter as to form, and gives the applicant such information as it possesses bearing upon the constitutionality and necessity for such a law. In no case does the bureau originate legislation. It does not suggest any course or render any opinions, the latter under the Constitution of the state of Illinois is the function of the Attorney General. The bureau simply helps the members to help themselves. It might be presumed that, where such an easy means of having bills drafted is afforded, the members would introduce more measures than if no drafting service were provided and therefore glut the calendars. The reverse thus far has been the experience of the bureau. Fewer bills were introduced at the last session of the legislature than at the preceding session and before the bureau was established. By means of the legislative digest as previously explained in this article, duplicate measures are easily detected and their introduction greatly curtailed. With the new members especially there is more a desire for bill introduction than with the more seasoned veterans, and as the statutes oftentimes contain ample provisions and are sufficient without further amendments, these conditions are pointed out to inquiring members so that fewer bills are really introduced, and this, of course, affords more time for consideration of other matters. It is rapidly becoming the consensus of opinion that we have too many laws, and that the best course that the general assembly could pursue would be to eliminate most of the useless law that is now found in the statute books. The bureau makes for more and better consideration of proposed measures, prevents in a way the introduction of unnecessary bills, tones up the entire legislative system, and enhances the value of the legislative product. After three years' trial in Illinois, the statement is commonly made even by those who little appreciated the value of the bureau at the beginning, that it is hard to realize why such an institution was not established long ago. The work of the bureau is confined principally to serve members of the legislature, but when time will permit, it has afforded to city officials, the public at large, and especially to civic bodies, much assistance and information. It has received much commendatory mention in the press, and its worth is becoming universally recognized. It is in every sense a legislative aid.



The Development and Functions of Legislative Bureaus

BY ARTHUR P. WILL

Chief of the Legislative Counsel Bureau of California

HE history of legislative bureaus in the United States extends over a period of only about twenty-five years, and, after the initial step, there was little, if any, development during the first ten years of that period. In England, as far back as 1837, the value of expert assistance in the drafting of laws was realized. In that year a barrister was employed to draft bills for the government. This work was so valuable that, in 1869, by a Treasury minute, the office of parliamentary counsel was created. Some years ago it was proposed to establish a department of similar scope as an adjunct of the United States Congress. At that time a committee of the Senate examined thoroughly the work of the department in England. During one of the hearings, Senator La Follette summarized the evidence of Ambassador Bryce as follows:

> He says in the first place they find it a great economy. It has cut off the introduction of bills, and it has simplified the work of the committees; has eliminated a lot of unnecessary labor, has enabled them to avoid the enactment of legislation that was not in harmony with the laws that had already been enacted, and their legislation has been in better legal form than ever before. The acts of Parliament are shorter and clearer and better expressed, and less litigation arises out of them. The advice of the parliamentary counsel has been found very useful in the work of consolidating the statutes.

The Senate committee was deeply impressed with the value of such a department, and reported a bill providing for the creation of the bureau, which, however, up to this time, has failed of passage. The need of help of this kind, however, is widely felt amongst members of Congress, who are given considerable assistance in investigations and in the drafting of bills by a department of the Library of Congress.

Many of the state librarians, of their own motion and in order to add to the value of their public services, have established reference bureaus in the libraries under their charge. In fact, it was Melvil Dewey, who, in 1890, made the first pretentious effort in the United States to render this sort of assistance in legislative matters, establishing a reference bureau in the library of the state of New York. In 1901, a legislative reference bureau was established in Wisconsin under the direction of Dr. Charles McCarthy and placed under the supervision of the library commissioners.

Wherever an independent department of this kind has been organized, the tendency seems to be to increase its facilities and to extend the scope of its work. In Indiana, the bureau, originally organized as a legislative reference department of the state library, has developed into a distinct department under the direction of a board consisting of the governor, state librarian, the presidents of the two state universities, and an additional member appointed by the governor. During the session of 1915, we are informed by Mr. John A. Lapp, the very efficient director of this bureau, three fourths of the bills introduced in the legislature were either drafted or revised by the department. Extensive research work was carried on, either for the information of members or for the assistance of the employees of the bureau in the work of formulating bills. The legislature has also imposed upon this bureau the duty of co-operating in the conduct of various legislative investigations and of codify-

ing the laws administered by several of the state departments. During the session of 1915, also, the stenographic force of the House of Representatives was placed under the direction of the bureau, which also considerably developed the facilities for furnishing information to the public.

The Illinois bureau is also under the supervision of a board of state officials. Four distinct lines of work have been imposed upon this bureau,—the collection of information, the recording of procedure during the session, the preparation of the state budget, and the drafting of bills. This department has been a distinct success, and has made for itself a permanent place.

The bureau in Pennsylvania, of which Mr. James N. Moore is director, was created in 1909, and has done an extensive and valuable work. In addition to the usual work of gathering information and drafting bills, this bureau, under direct authorization of the legislature, has examined the entire statute law of Pennsylvania, and has prepared a list of laws and parts of laws which have been repealed or which have become obsolete, and has prepared compilations of various bodies of laws, and has presented to the legislature codes upon these subjects. As an illustration of the widely different character of work which may be imposed upon bureaus of this kind, it may be noted that the director of the Pennsylvania bureau must be an expert in parliamentary law, as he is made by the statute *ex officio* adviser to the general assembly in matters of legislative procedure and parliamentary practice.

The bureaus named above are specified not in any discriminating spirit, but because they illustrate in a striking manner the vast field of useful public service that is open to the agencies now under discussion.

The idea of bureau work as an aid to legislation has taken hold very rapidly. At the present day in nearly every state in the Union there is a bureau organized either as an independent department of the state government or as a branch of the state library, or conducted as a part of the work of some university. Sometimes there is a combination of these various forms. Thus, in New York there are two official draftsmen who are attached to the legislature and are paid very liberally. There is also a reference department of the state library. In addition there is administered, under the auspices of Columbia University in the city of New York, what is known as the "legislative drafting research fund," which conducts extensive investigations and has made some very valuable compilations. One or more of the provinces of Canada and certain other British dominions have provided for an official to draft bills for the administration. The official is variously known as "parliamentary draftsman," "parliamentary counsel," and as "law clerk."

The English people believe in paying to their officials salaries commensurate in some degree with the work performed. The parliamentary counsel of Great Britain receives the equivalent of about $12,500 per annum. He is provided with an assistant who is paid $10,000. The parliamentary counsel of the recently created province of Saskatchewan in Canada is paid $4,500. But the British parliamentary counsel, or the law clerk in the British dominions, is not burdened with the responsibility nor with the extent or variety of work which falls upon the shoulders of the director of the official legislative bureau in one of the American states. An efficient bureau director should be a trained lawyer who has specialized in constitutional law. He should have an extensive acquaintance with the substance and origin of the statute law of his own state, and at least a general knowledge of important legislation in other states. From time to time he is called upon for information as to the existence elsewhere of a specific statute, as to the decisions of the courts construing it, and as to the manner in which it has worked out in practice. He must have a certain familiarity with the business interests of his state, and must be conversant with the public movements of the whole country. He will be the better for an acquaintance with the history of the English speaking peoples, and he should be a ready writer. To attain suc-

cess in such a position, moreover, he must be a diplomat and a man of unfrayed nerves. These are qualifications that are demanded, and of course it is idle to hope to retain such a man on anything less than a living salary. And certainly in this, if in any state office, success is largely dependent upon the experience and permanency of the official.

The Legislative Counsel Bureau of California was established by a statute of 1913. The organization, however, was not completed until 1914. An appointing board was provided, to consist of two members from the senate and two members from the assembly, and in neither house could the two members be of the same political party. The chief of the bureau must be chosen without reference to party affiliations, and solely on the ground of fitness to perform the duties of his office. The term of office is four years. The salary is fixed by the appointing board, and the permanent office is in the state Capitol. The chief was chosen and the bureau commenced operations in the summer of 1914.

It is the duty of the chief of the bureau to prepare or assist in the preparation or amendment of legislative bills at the suggestion of the governor, or of any judge of the various courts of record of the state, or of any committee of either house of the legislature. Such suggestions must be made in writing, and must set forth the reasons for the provisions desired. The method in which suggestions by a judge shall be made and filed and brought to the attention of the chief of the bureau is prescribed by the statute. During the session of the legislature, the bureau and its chief "shall give such consideration to and service concerning any bill before the legislature which circumstances will permit, and which is in any way requested by the governor of the state or the senate or the assembly, or any committee of the legislature having such bills before it for consideration." Also, the bureau shall "upon request, and so far as may be in its power, aid and assist any member of the legislature as to bills, resolutions, and measures, drafting the same into proper form, and furnishing to them the fullest information upon all matters in the scope of the bureau." It is the duty of the chief to make such study of the legislation of the country "as may the better enable the bureau to do its work, and advise, as occasion may arise, as to needed revision of the statutes." Neither the chief nor any employee of the bureau shall oppose or urge legislation, nor reveal to any outsider the nature of any of the matters pending before the bureau, without the consent of the person submitting such matter to the bureau. A statute of 1915 directed the chief, "whenever in his judgment there is a reasonable probability that an initiative measure will be submitted to the voters of the state of California under the laws of the state relating to the submission of measures by initiative, to co-operate with the proponents of said measure in the preparation of said law when requested in writing so to do by twenty-five or more electors proposing such a measure."

In California the legislature meets every second year on the first Monday after the first day of January, and continues in session for a period not exceeding thirty days. A recess is then taken for not less than thirty days. During the first part of the session any member of either house may introduce as many bills as he pleases. On reassembling after the recess, however, no member can introduce more than two bills, and to introduce any he must have the consent of three fourths of the members. A member is not compelled, therefore, to submit any bill to anyone for revision before introducing it. By a joint rule of the senate and assembly of 1915, however, it was directed that no bill which bears the stamp of the legislative counsel bureau, showing that before introduction it had been examined as to form, shall be sent to the committee on revision and printing, to which all other bills must be referred before being printed.

It is clear from the above recitals of the powers and duties of the legislative counsel bureau that that bureau is much more than a bill-drafting agency. The

drafting of bills is only one of its functions. As the writer pointed out in a report to the committee on legislative drafting of the American Bar Association, it is a legislative counsel bureau in the fullest meaning of the term. Describing our work more particularly, it was said in the statement just referred to:

> The months intervening between the organization of the bureau and the meeting of the legislature were occupied in consultation with various departments of the state government relating to the measures which they contemplated presenting to the legislature, in gathering from this state and elsewhere information on various subjects which it seemed probable that the legislature would consider, in drafting bills in response to requests by members of the legislature, and in otherwise preparing for effective and adequate service. . . . Of the 40 members of the senate and 80 members of the assembly, 120 in all, 115 resorted to this bureau during the session for service of various kinds and extent. In addition to these members of the legislature, we were called upon by nine departments of the state government and the executive. . . . The chief of the bureau, during the session of the legislature, was daily called upon to express his opinion as to the practicability of proposed measures and their relation to existing laws, to give opinions verbally and in writing as to the constitutionality of proposed laws, and in other ways to counsel the legislature and the departments. As far as we were able during the rush of our daily work, we kept track of the progress of legislation in other states regarding subjects of interest to the people of this state. The bureau was constantly called upon to prepare amendments to bills already introduced, and to advise the legislative committees on revision and printing.

The chief of the bureau prepared for the use of the members of the legislature a monograph on the restrictions on the powers of the legislature under our Constitution, the object being to call attention particularly to the constitutional provisions relating to the form of statutes, to the manner in which statutes might be amended and repealed, and to the extent to which and the subjects as to which legislative power is restricted. The monograph pointed out not only the relevant provisions of the Constitution, but also the decisions construing them and the more general rules laid down by courts for the interpretation of statutes, and was full enough to enable the legislator to avoid many of the ordinary pitfalls.

Some of the rules laid down in such an essay are, of course, of general application, but to be of the greatest value to members of the legislature a pamphlet of this kind should be prepared in each state, and especially in every state where the Constitution is lengthy and contains many detailed provisions, as is the case in California. The preparation of such a guide is very properly the work of the legislative bureau. The following analysis shows appropriate heads under which may be arranged the substance of such an essay. Of course the work can be condensed or enlarged as the needs of the case seem to justify.

I. Subject and title.
  a. The word "subject."
  b. Title.
    1. Illustrations.
    2. Meaning of words.
    3. "For other purposes."
    4. Liberal construction.

II. Enacting clause.

III. Amendments.
  a. General rules.
  b. Title of amending act.

IV. Repeal.
  a. General rules.
  b. Repeal by implication.

V. Uniformity.
  a. General rule.
  b. Illustration.
  c. The test.

VI. Privileges and immunities of citizens.

VII. Local and special laws.

VIII. Delegation.

IX. Nullification of statutes.
  a. Statement of rule.
  b. Extrinsic evidence.

X. Interpretation.
  a. General rules.
  b. Title.
  c. Punctuation.
  d. Grammatical construction.
  e. Strict construction.
  f. Grants.
  g. General and specific provisions.
  h. Qualifying clauses.
  i. Omission of words.
  j. Words and phrases.
  k. Code definitions.

X.—continued.
- l. "Shall" and "may."
- m. "Tax" and "fee."
- n. Antecedents.
- o. "Said," "such" and "same."
- p. "And" and "or."
- q. Clerical errors.
- r. Ejusdem generis.
- s. Expressio unius.
- t. Foreign statutes adopted here.

XI. Urgency measures.
XII. Appropriations.
XIII. Time of introduction of bill.
XIV. Printing and enrolment.

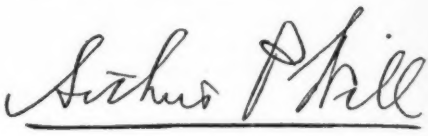
By direction of the legislature, during the constitutional recess of 1915, the bureau prepared an edition of the Constitution of California, showing the recent amendments, to which was added the Constitution of the United States and other public documents. Under each section of the California Constitution were given references to the reported decisions of our courts in construction thereof. This book was printed at the State Printing Office, and distributed to public officials, schools, and other public bodies.

Under the Constitution of California the governor has thirty days after the adjournment of the legislature (Sundays excepted) in which to sign bills left unsigned at the time of adjournment. One of the most important duties imposed upon the chief of the bureau is that of assisting the governor in his examination of bills during this period. In the legislature of 1915, 2,877 bills were introduced in addition to resolutions and constitutional amendments proposed. Of these 996 bills passed both houses, a number of which were disposed of before adjournment. When the legislature adjourned it left in Governor Johnson's hands for consideration about 850 bills dealing with an infinite variety of subjects, such as would naturally arise from the multifarious interests of a territory extending from tropical sands to everlasting snow. It will be readily appreciated that the work of that thirty days was no sinecure. To facilitate the investigation an index of the bills was prepared and a digest of all the important measures was laid on the governor's desk. It was a few minutes before midnight on the thirtieth day when the work was completed. In that time every bill had been examined critically. Altogether 771 bills became laws.

In addition to the publications mentioned above, the department has prepared a supplement to the election laws, a compilation of constitutional and statutory provisions relating to the initiative and referendum, and an index to the statute law of California.

The teaching of experience is that the best results are obtained by establishing such a bureau as we are discussing as an independent branch of the state government, separate from any other governmental agency. If the state library and the legislative bureau work together in harmony, as they have worked in California, each performing its own functions, the result to the legislature and the public will be distinctly beneficial. The library, properly conducted, is the depository of many of the documents from which the bureau will derive much of the information that it will need in drafting bills and in advising legislators and governmental departments. Formulating legislative bills and advising legislators on constitutional questions and statutory provisions is purely the work of trained lawyers such as should be found in the legislative bureau.

The chief officer and all of the employees of the bureau should be nonpartisan in their activities, and should not initiate laws nor lobby either for or against any bill. They should serve all members of the legislature freely and with equal energy. By such conduct alone can such a department serve the full purpose of its creation and attain the full height of its legitimate influence.



The Law Making Bodies of Denmark, Sweden and Norway

BY AXEL TEISEN

of the Philadelphia Bar

THE original Constitution of Denmark was approved June 5, 1849. Its first sections state that the executive power is vested in the King, the legislative power in the King and the Rigsdag jointly, and the judicial power in the courts. The original Constitution has been superseded several times by new Constitutions, the last of which was approved June 5, 1915, exactly sixty-six years after the approval of the first, but all of them have maintained the same distribution of the powers of state, expressed in identical words.

To Americans it will appear as peculiar that the executive has a share in the legislative power, but this is a consequence of the strict parliamentary government in force in Denmark. As in England, so in Denmark, the King's ministers, whether members of Parliament or not, have the right to propose laws before either of the "Ting" of the Rigsdag, to appear and to speak in support of, or in opposition to, any measure up for debate. But they take no actual part in the work of the committees (Udvalg) of the respective Ting, although they may appear before them to furnish information. The King's share in legislative work, therefore, consists in his right to propose legislation, to influence, directly, the action of the Rigsdag during its deliberations on proposed legislation, and finally, in his absolute right to veto any act passed. In Denmark (and in Sweden, but otherwise in Norway) the Rigsdag cannot pass any measure over the King's veto. But the form of government being parliamentary, a veto is practically unthinkable under any circumstances. The adoption by the Rigsdag of an act opposed by the ministry will, in almost all cases, force the resignation of the latter or a dissolution; and if the matter is not considered of sufficient importance to cause such resignation or dissolution, neither will it be of sufficient importance to invoke the King's veto power.

For all practical purposes, then, the lawmaking body of Denmark is the Rigsdag (Assembly of the Realm). This is divided into two houses,—the Folketing (the Chamber of the People) and the Landsting (the Chamber of the Country). The composition and respective powers of the two Ting have undergone many changes under the various Constitutions, as have the requirements as to eligibility and also the requirements for the right to ballot for members thereof.

The Constitution of 1915 is not in force. After many years of negotiations and political battles, all parties did finally, in that year, agree to a new Constitution, and it was passed and approved by the King. But owing to the great war, and to Denmark's peculiar situation as sitting squeezed in between three of the principal belligerents, it was realized that all of the best thought and effort of the nation were required in their effort to keep themselves out of the war, and thus save their country from any such calamity as had befallen Belgium, and which has since overtaken Serbia, Montenegro, and Greece. For this reason a clause was inserted in the Constitution, that it should not take effect until one year after its approval, or until a separate law to that effect should be passed. Such separate law was passed, according to which the new Constitution will come into effect on June 5, 1917; but in case it should appear that the war will continue after that date, it

is likely that an amendatory act will be passed further postponing the coming into force of the new Constitution.

However, this Constitution will—within a shorter or longer space of time—be the future fundamental law of Denmark, and in the following we shall base our remarks upon the provisions thereof.

The Parliament of Denmark is called the "Rigsdag," the old name in use for the general Parliament of the realm prior to 1660, when an autocratic form of government was adopted. It consists of two houses,—the lower house or "Folketing" and the upper house or "Landsting." The first name was invented for the occasion, but the latter is as old as the people, and was the name of the old provincial assemblies, applied to this house because elections to it take place within large districts roughly corresponding to the old "Lande" or provinces.

The number of the members of the Folketing is fixed from time to time through legislation, but must not exceed 140. The members are elected for four years, and receive a yearly compensation. Eligible is any person having the franchise, in other words, both men and women twenty-five years of age, and not suffering from any of the disqualifications depriving a person of his or her vote.

The members of the Landsting number 72, of whom 54 are elected in the manner hereafter stated for eight years, but 26 and 28, respectively, are renewed every four years. The remaining 18 are elected in a separate manner for eight years and are all renewed at one time. Eligible is any person having the franchise for the Folketing, provided he has his residence in the Landsting district in question and is thirty-five years of age. At the same time the 54 members are elected, there are also elected 54 suppletories, who must have the same qualifications. No suppletory can take his seat in the Landsting, unless the person he is to supersede has actually ceased to be a member of the house.

As will be noticed, the right of franchise is free and equal, except that nobody has the vote for the Folketing until his or her twenty-fifth year, or for the Landsting until his or her thirty-fifth year.

The disqualifications are as follows: The elector must not lack "Infödsret" (the right of a native); that is, he or she must be a citizen, either by nativity or through naturalization; he or she may not have been found guilty of any act which carries with it infamy according to public opinion (most crimes); he or she must not receive support (in whole or in part) from the poor board, or have received such within a certain number of years past without having refunded it; he must not have lost control of his estate, either by being an undischarged bankrupt or by having had a guardian appointed of his person or estate.

Proportional voting has long been in use in Denmark as far as elections to the old Landsting were concerned. It was combined with a rather "Prussian" system of class voting, whereby the higher taxpayers were assured control of the upper house. This has been done away with under the new Constitution. But proportional voting, both to Folketing and Landsting, has been retained, partly as obligatory, party as permissible.

Of the 72 members of the Landsting, 18 are elected through proportional voting by all those persons who, on the day when the new elections are ordered, formed the outgoing Landsting. Ten are elected in Copenhagen and Frederiksberg (a suburb) forming one election district, one is elected from the island of Bornholm, one from the Faroes, and the remaining 42 in districts of varying size embracing the balance of the country. The member from the Faroes is elected by the local Lagting. The election of the remaining 53 members is not direct, but indirect through electors who are chosen by proportional voting.

The King may freely dissolve the Folketing, provided he orders new elections to be held within two months. But the Landsting cannot be dissolved except under the following circumstances: In case the Folketing has passed an act and has sent it to the Landsting not less than three months prior to the end of the session, but the Landsting has not approved

it, nor, after a conference committee has agreed upon a form of bill, the same has been accepted by both houses, and the Folketing, after a new ordinary election, has passed the act unaltered and has sent it to the Landsting, within the aforesaid three months, but an agreement is not reached by the two Ting,—in such case, and in such case only, does the King have the right to dissolve the Landsting. In other words, such dissolution is not a matter of practical politics, and this indissolubility of the Landsting forms the present fortress of the conservative interests.

Each Ting passes on the qualifications of its members, elects its own officers, and carries on its business through such committees as it chooses. Members of committees are not selected by the presiding officer, but by the groups or parties which are entitled to proportionate representation on all committees. While the Rigsdag is in session, no member thereof can be arrested or indicted without the consent of his own Ting, unless he is caught *in flagranti*.

The annual finance law or appropriation bill must be introduced in the Folketing, but any other legislation may be introduced in either house.

Each bill must be given three readings in each house, and there must be a certain interval of time between the readings, but this latter may be dispensed with by each Ting when a sufficient number of the members vote in favor thereof.

Each bill, as passed by both houses, is sent to the King for his approval, and his signature makes the bill a law, *provided* his signature is countersigned by at least one of his ministers. Without such countersignature, no act of the King is of any legal effect whatever.

The details concerning election districts and election machinery are too minute and complicated to find a place in this article. Their general object is to obtain expression and representation of all opinions held by any considerable body of electors.

As far as the law-giving bodies of Sweden and Norway are concerned, the room allotted us will not allow us to go into many details.

Sweden, among the Scandinavian countries, is the most conservative, with certain feudalistic traits left in its form of government. On the other hand, Sweden has never been without what is called "free institutions;" it has always had a legislative assembly. Its present Constitution dates from June 6, 1809, and its Riksdag or Parliament was organized under a law February 10, 1810. It was an assembly of estates, nobility, clergy, burghers, and peasants, forming four houses, three of which must agree before any act could be passed. This system proved itself too cumbersome, and large classes were excluded from influence on the government. By act of June 22, 1866, the form was changed, and hence there has been in Sweden as in most other countries a Parliament of two houses, elected by the people at large. But notwithstanding, the Swedish form of government has retained a number of the old peculiarities, and the Swedes contend that as a consequence they have been just so much to the good, as they retained what centuries of practice had proved to be effective, Rousseau and consorts to the contrary notwithstanding.

The two houses of Parliament are called "Förste-Kammar" and "Andet-Kammar" (first and second chamber). Members of the first are elected by the councils of the cities (Stadsfullmägtige) and of the country districts or Len (Landsting). Members of the lower house are elected by direct vote as far as the cities are concerned. Outside of the cities, elections are indirect through electors, unless the majority of the voters, at an election for that purpose, determine upon direct elections. The sizes of the districts and the long distances form the explanation.

The powers of the Riksdag and their mode of procedure are about the same as in other constitutional monarchies; but if the two houses cannot agree on the appropriation bill, they hold a joint session, and the majority of all the members of both houses can pass the bill.

The upper chamber had some years ago 138 members, but this may have

been changed. At the same time the members of the lower house numbered 214, but this may have been changed also, as the number of members of both houses is supposed to be graded according to population.

The Constitution of Norway is of May 17, 1814, as the same was amended November 4, 1814, owing to the personal union with Sweden. Norway's original Constitution was in many respects modeled upon that of the United States, and the executive and legislative powers were kept strictly apart. The King selected his own ministers, and these had no entrance to the Parliament, and he had but a suspensive veto. The Constitution of Norway, however, has been amended many times over, and in Norway as in Denmark, a pure parliamentary form of government prevails. The ministry is not now the representative of the King, but of the majority of the Storting, or Parliament. There is but one house elected (by free universal suffrage including women as well as men), but after election the members divide themselves into two assemblies,—the Lagting and the Odelsting. The number of members of the Storting was 114 in 1878, but we believe it to be larger at present. At the opening of each Storting it selects one fourth of its members to form the Lagting; the remaining three fourths form the Odelsting. Each of these two Ting elects its own officers. All legislation must originate in the Odelsting; when an act has passed there, it is sent to the Lagting, and when passed there also, it goes to the King for his approval. But if the Lagting does not pass it, or amends it, it must send it back to the Odelsting; if here it is passed in a form different from that adopted by the Lagting, it is again sent to the latter, and if no agreement is reached, the Storting convenes as one body and either passes or rejects the law; if passed, it is sent to the King in the form adopted by the Storting *in pleno*.

Otherwise, the parliamentary procedure, powers, and immunities are very much the same as in other constitutional monarchies.

Iceland is in personal union with Denmark, but, from being a mere dependency, has, during the last forty-five years, developed a constitutional government of its own. Its legislature is called "the Alting." Constitutional changes must be approved by the Danish Rigsdag, and in all external matters Iceland is part of Denmark.

Symposium on Uniform State Laws

[Ed. Note—It is our privilege to present in this number a series of articles dealing with the work accomplished by the Commissioners on Uniform State Laws and outlook in this important field. Each article treats the question from a different individual viewpoint, and many interesting phases of the subject, are discussed. We believe the attempt to secure Uniform State Laws to be one of the most valuable and productive lines of effort carried on under the auspices of the American Bar Association.]

Uniform State Laws

BY GEORGE B. ROSE

of the Little Rock (Ark.) Bar

O doubt Gladstone was right in declaring that the Constitution of the United States is the greatest single product of the human mind. It has met every exigency for more than a century, and we may well hope that it will stand the wearing of the ages. The anarchist has raged against it in vain. It has proved strong enough to curb the greed of the predatory rich. It has passed unscathed through the fiery ordeals of foreign and domestic war. Under it we have enjoyed a prosperity unexampled in history.

We see now that all the powers granted to the national government were well bestowed; but we also see that other powers could have been advantageously conferred. The states that formed the Union were too jealous of their authority. They retained dominion over matters that are essentially national.

It may be tolerable for each state to regulate the devolution of real property. That must remain within its borders. The states can also properly establish rules of inheritance, systems of taxation, methods of public improvement, criminal regulations. These things are essentially local. It would be more convenient, perhaps, if they were uniform; but to leave them in the control of the states insures greater flexibility and a better adaptation to local conditions. In a territory so vast as ours, circumstances and requirements vary, and they change rapidly with the progress of science and invention and the continual increase of population. State legislation is prompt, while congressional action is slow. Too often, likewise, Congress is unpardonably dilatory in ascertaining the needs of remote portions of our country, as is evidenced in Alaska and the Philippines. If we should wait for it to provide for every local exigency in our immense domain, we should often have to endure intolerable delays.

But there are a number of subjects which should have been confided to national regulation. Bills and notes, which fly on the wings of business from one end of the country to the other, should be regulated by national laws. So should bills of lading and warehouse receipts, which are the basis of our prodigious domestic and foreign commerce. Fire and marine insurance, without which all commercial transactions are intolerably precarious, and which attend the subjects of trade over land and sea, should also be regulated by Congress. Marriage and divorce, which fix the status of our ever-moving population, should likewise be controlled by the Federal legislature, so that we should not have the spectacle, now so frequent, of a man or woman being a married person in one state and single in another. Corporate stocks, which pass from hand to hand on the exchanges at the rate of many millions per day, should be transferred under national regulations, so that the man in Boston would know his rights when he purchased stocks in a California corporation. In short, everything that deals with commerce should be governed by Congress, so that we might not only have uniform laws throughout the nation, but an authoritative construction of them by the highest court in the land.

Many things purely local could with

great advantage be regulated by the Federal government. If lands were conveyed only by the inhabitants of the state where they lie, it would do no harm to allow to each state a different form of conveyance. But lands in each state are owned by inhabitants of every other state, who are continually put to great inconvenience to ascertain the forms of acknowledgment required. Wills have constantly to be executed under circumstances of great haste while life lasts or intelligence remains, and often there is no opportunity to find out the laws governing the forms of testamentary disposition in the distant state where lies a part or the whole of the testator's property; and for want of that knowledge his intentions are often defeated. No harm would result to anyone if Congress could pass an act establishing the forms of conveyances and wills in all the states; and the convenience would be enormous.

Unhappily the provincial jealousies of the commonwealths that combined to form our Union prevented the grant to Congress of these desirable powers. The result is a confusion that is almost as insufferable as that which existed in France before the Revolution, when each province had its separate system of jurisprudence. Indeed, it is as bad, or worse; for while our states are larger than the old French provinces, steam and electricity have enabled us to travel with such celerity that we pass from one set of laws to another as rapidly as they did in France in the days of the *Ancien Régime,* perhaps more rapidly still. But the condition is now so firmly established, and the difficulties of securing the adoption of the necessary amendment to the Federal Constitution are so great, that only an overwhelming cataclysm like that through which the French nation passed could bring about a change. There are some who desire such a cataclysm; but they are not in the legal profession.

As matters stand, we have not only local common law and local statutes in each state, but a varying construction of statutes in state and Federal courts. In matters of general commercial law the Federal courts have their own rules, which are often different from those of the states where they sit. The national tribunals pay no attention to state decisions rendered after the issue of the negotiable paper or the formation of the contract, even when those decisions construe local statutes. A man's rights, therefore, often vary with the court that passes on the case. In any other country such a condition of affairs would be deemed intolerable; and only the patience and practical common sense of the American people render workable, machinery so complex and so ill-adjusted.

To remedy these evils the American Bar Association has set on foot its movement for the adoption of uniform state laws on the subjects of most universal importance. Necessarily progress along these lines is slow. It is difficult to interest state legislatures in matters of that kind, involving neither local patriotism nor political advantage. Still, much has been done. The uniform negotiable instruments law has been adopted in forty-seven states; the uniform law governing bills of lading and warehouse receipts has been passed in thirty states; and the uniform sales act has been adopted in fourteen states.

These laws offer great advantages. They enable the business man in one state to ascertain quickly and accurately the law in another. But they are far from being so effective as a national law would be. For, even though uniform, they are subject to divergent constructions in the several states; and there is no supreme tribunal to compel a uniform interpretation. Human affairs are so infinitely complex; the rights of one man so often conflict with the rights of another that are perhaps equally sacred, that it often becomes necessary to construe even the plainest acts. Language, too, is never of mathematical precision. Then, again, a statute is like a mountain, —it looks different according to the side from which you approach it. So, the plainest statutes will receive varied interpretations, depending on the bias of the judge or upon the equities of the particular case, which often lead the courts to overlook the ultimate consequences of their decisions. If such laws could be passed by Congress, they would receive

at the hands of the Supreme Court of the United States a construction which all other tribunals would be compelled to follow.

It may be said that that would cast upon our highest court an intolerable burden. On the contrary, it would lighten its labors immensely. Now, it must inform itself of the statutes and decisions of every state. Then it would only have to consider a single act and one line of decisions.

There is also the perpetual danger that later acts may unintentionally alter the uniform law. We frequently meet with cases of that sort, where statutes are amended by others which were designed to have no such effect, and which would not have been passed, at least in that form, if the legislature had foreseen the consequences. When the uniform law has been amended in this way, it becomes a trap for the person in another state who turns to it for guidance.

These objections are, however, no reason why we should slacken our efforts to supply the deficiencies of our Federal Constitution. The man who will not take the best that he can get because he ought to be able to get something better is a mere doctrinaire,—a character more frequently encountered among the French, with their highly logical minds, than among us, with our practical common sense.

Despite the danger of unsuspected amendments and conflicting constructions, the uniform statutes are an immense convenience. Their language is usually so plain that one can afford to act upon them even in another state. But perhaps their greatest advantage is that they are admirable codifications of the branches of jurisprudence with which they deal.

Take the uniform negotiable instruments law, for example. Before its adoption, one had to seek the law in various treatises. These revealed to him that the decisions were in irreconcilable conflict on many questions. So, he had to go to the reports, and consult the cases, and then guess as to which would be most persuasive with his own courts, or the courts of the state where the bill or note was executed or payable. Now the principal controversies are all settled. Simple rules, which the layman can understand, control the paper from its inception to its final extinction.

It used to be thought that while codes would do well enough for the frog-eating French, they would never meet the requirements of the beef-eating English and Americans. But the negotiable instruments law has dispelled this delusion. It has proved that codes are as useful with us as with anyone else. The essence of a hundred thousand decisions is extracted; the impurities are thrown away; and the final result presented in a few pages, which the ordinary business man can comprehend.

It is well that we have had our long series of reports. In them almost every question is presented from every side. They show the workings of the rules under almost every conceivable condition. They present such a body of able juridical reasoning as the world has never seen. But after this tremendous threshing, it is time to pause and gather up the wheat. No rules can be devised that will do justice in every case; but with such a vast number of examples showing how each rule has worked in varying circumstances, we are now in a position to choose the best.

State legislation, and even the legislation of Congress, is usually prepared by men with no especial training or capacity. It is often drawn up in haste. These uniform laws, on the contrary, are the work of some of the ablest lawyers of England and America, who have viewed their subject from every side, who have consulted together, and who have promulgated their rules only after the maturest consideration and when every word had been repeatedly scanned and weighed. As codifications they are worthy to stand beside the Code Napoleon. They present the law in the briefest possible compass, and with a precision as great as the infirmities of human speech will permit. They are the worthy beginning of that great system of codification which must eventually embrace every branch of jurisprudence.

George B. Rose

The National Conference of Commissioners on Uniform State Laws

—The Work Accomplished—

BY WALTER GEORGE SMITH

of the Philadelphia Bar

A Former President of the Conference

THE twenty-sixth annual meeting of the National Conference of Commissioners on Uniform State Laws was held at Chicago, August 23-29, 1916. There were representatives from thirty-six states. After so long a time since the organization of the conference, it is well to summarize its accomplishments.

As is well known the movement to attain uniformity on subjects of interstate importance was the outcome of the plan proposed by the American Bar Association, which was formed in 1878. One of its declared purposes was to promote uniformity of legislation throughout the Union. A committee consisting of one member from each state was appointed in 1889, with wide powers, but its work has been, even from the first, almost entirely restricted to passing upon acts formulated by the conference of commissioners. This body owes its origin to the invitation extended by the governor of New York, who was authorized to appoint three commissioners by the name and style of "Commissioners for the Promotion of Uniformity of Legislation in the United States." It was the duty of these commissioners to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates, and other subjects, and to ascertain the best means to effect an assimilation in uniformity in the laws of the states, and especially to consider whether it would be wise and practicable for the state of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states. From comparatively small beginnings, the conference has grown, until now, either by virtue of legislative enactment or by appointment of the governor, commissioners have been named from all of the states, territories, and possessions under the jurisdiction of our Federal government.

The conference has been so organized that appropriate committees are charged with the responsibility of preparing and reporting drafts of acts on subjects deemed proper for uniform legislation. By recent provision of the by-laws, no act can be recommended for adoption by the legislatures which has not been considered by two annual conferences, so that the danger of hasty action has been eliminated. In truth, the conference has always been conservative, and gradually there has arisen a custom, which is rarely departed from, of employing an expert to make a draft of the proposed act which is first filtered through an appropriate committee, where it is subjected to the most careful scrutiny, and then section by section it is debated in committee of the whole of the conference,

so that so far as it is possible the danger of error is avoided. In addition to these safeguards, it is customary in all matters of major importance to ask criticism from lawyers and law teachers, from business men and corporation officials, or any others especially competent to pass judgment. Not infrequently, public meetings have been held in large cities, where open debate has been had both upon the policy of seeking uniformity on a given subject and upon the language of the act which has sought to embody such policy. It is not necessary to point out to lawyers the importance and necessity of the work of the commissioners. With forty-eight states quite independent of each other, excepting so far as they have delegated certain rights of sovereignty to the Federal government, with a commercial business overlapping state lines, and with state laws divergent both in statutory expression and in judicial construction, hardships, loss, and injustice have not infrequently been suffered in business matters, while in social relations relating to marriage and divorce and similar subjects, scandals have arisen that cry loudly for abatement.

Walter George Smith

There is a strong and growing school of thought which, despairing of the success of our dual system of government, seeks to minimize more and more the power of the states by amendment to the Federal Constitution; and the ultimate effect, if successful, would be to make of our government a vast bureaucracy. It is believed to be essential for the success of our Federal Republic that the relation between the states and the national government should not be changed; that in all matters strictly of local importance state authority should be supreme. The anxious question arises when the state jurisdiction is supreme over a matter affecting the rights and responsibilities of citizens of other states. Unless uniformity of legislation can be secured on these subjects, appeal for relief from the Federal authority will become irresistible. The tendency ever since the close of the Civil War has been increasing in that direction. The conference has formulated six commercial acts relating to negotiable instruments, sales, warehouse receipts, bills of lading, stock transfers, and partnerships. These acts are complete codes upon the subjects with which they deal. Each of them was drafted by an expert, submitted for public criticism, and was for years under consideration before receiving its final form. In consequence of such careful preparation, the first of these acts, although it carried with it no greater sanction than the history back of it, has become the law in 47 of the 53 jurisdictions of the United States. It has been the law in some of the states for nearly twenty years. Naturally, there have been questions before the court requiring an interpretation of its

provisions, and minor defects have been discovered, but on the whole it may be confidently asserted that it has attained its purpose of unifying the law relating to commercial paper in the United States.

Warehouse receipts and bills of lading have been dealt with on the analogy of bills of exchange and promissory notes, and have been made negotiable by the acts dealing with them, following the custom of merchants, so that the use of both as bankable paper has been encouraged, and great values have been thereby unlocked and made fluid.

The uniform stock transfer act has established that a certificate of stock is the sole and exclusive representative of shares of stock in a corporation in that it passes freely from hand to hand, and a bona fide purchaser for value of a duly indorsed certificate becomes the owner thereof against all the world.

The uniform sales act embodies in comparatively few sections the law on this important subject, and while, except in Louisiana, its adoption would make no very radical change in the law of any state, it would to some extent change the law in all of them.

The five acts above referred to have been based upon acts adopted by Great Britain and her colonies, beginning with the bills of exchange act of 1882. In drafting them, an effort has been made to avoid any changes in existing law, following the English precedent. Of course, where there have been divergent doctrines, it has been necessary to choose between them, and in such cases the weight of authority has been followed. The conference has recognized the fact that it was not appointed to bring about reforms, but only to unify existing law, and it has steadily avoided any pressure to deviate from this plan, and, in the main, has been successful. The mercantile theory making the possession of documents of title equivalent to actual possession of the goods they represent has been of great value to the business community, and has been embodied with a slight exception in these acts. While the warehouse receipts, bills of lading, sales and stock transfer acts, have not been as universally accepted as the negotiable instruments act, every winter some legislature adopts one or more of them, and the progress of uniformity is steady and encouraging.

The latest efforts to bring about uniformity in commercial law have dealt with partnerships, fraudulent conveyancing, and conditional sales. The uniform partnership act has been completed and passed in three states. Some discontent has arisen because the conference did not adopt the entity theory of a partnership, but, following the great weight of authority, it was decided to treat a partnership as an association of two or more persons to carry on as co-owners a business for profit. The adoption of this act will clarify many vexed questions, and be a real boon to the business community.

Following this act, and completing the treatment of this subject, is the limited partnership act, which was completed at the last conference and which will remove many of the objectionable features in existing acts.

The conditional sales and the fraudulent conveyance acts will be completed in all probability at the next session of the conference, the drafts being now in the tentative stage.

An act relating to the registration of land titles, embodying the principles of the Torrens system as adapted to this country, was recently completed, and has become the law in the state of Virginia. It will doubtless be brought to the attention of many of the legislatures during the coming year.

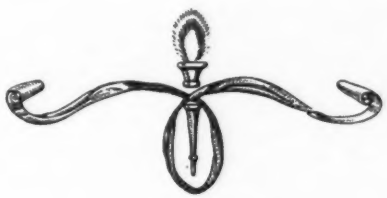
A model uniform workmen's compensation act, a cold storage act, and a child labor act, none of which have been adopted in form in any of the states, cannot but be of benefit to legislators in dealing with these subjects, and will prepare the way for uniformity which, while perhaps not as necessary as in other branches of the law, is none the less most desirable.

The act relating to annulment of marriage and divorce was drafted by the National Divorce Congress, which met in Washington in 1906 at the invitation of the governor of Pennsylvania, issued by legislative authority. It embodies the best features of the divorce laws of all of the states. It does not deal with causes, leaving them to the judgment of

each state, but wherever its procedural features have been adopted, it has removed as far as possible the scandals connected with migratory divorces and the uncertainty as to the validity of divorces granted where the parties to the suit are not residents of the same state. The provisions of this act are the law in Delaware, Wisconsin, and New Jersey. It is substantially the law in Illinois. Hitherto, however, there has been an apathy upon this subject which has been somewhat discouraging. It would be unfortunate if the already overburdened machinery of the Federal government were compelled to take up the matter of such strictly state jurisdiction as the status of its citizens in the matrimonial relation, and yet the rising tide of divorce and the many scandals connected with it are leading many towards this counsel of despair. It is probable that the unfortunate results of the different jurisdictions of the state governments is nowhere more painfully apparent than in the law of divorce.

Other acts of great social importance are those relating to desertion and nonsupport of wife by the husband, or of children by either of their parents; the act relating to wills executed without the state; the act to make uniform the law of acknowledgments; the act relating to the extradition of alleged lunatics; acts regulating marriage and marriage licenses, and on the subject of marriages in other states in evasion of the laws of the domicil.

At first sight, this does not seem a very large output for twenty-six years' existence, but it must be borne in mind that it took the conference some time to get its orientation, and its work must necessarily be slow and cautious; and that it has been hampered by lack of money. Only a comparatively small number of the states make an appropriation for the expenses of their commissioners and a proportionate contribution to the treasury of the conference. All of the commissioners serve without compensation, and some add to the value of their time their personal expenses in attending the meetings of the conference and its committees. Notwithstanding these drawbacks, examination of the list of commissioners will show that men of real weight and ability are giving and have been giving for years much of their time to this labor of love for the community and for the profession, and to a greater and greater extent the value of its work is being appreciated. Certainly it is both patriotic, as tending to maintain the autonomy of the states in their proper relations to each other and to the Federal government, and useful to the community as making certain many subjects that have been hitherto enshrouded in darkness and uncertainty.



The Movement for Uniform State Laws

BY W. O. HART

of the New Orleans Bar

Commissioner of Uniform State Laws from Louisiana, Vice President of the National Conference of Commissioners on Uniform State Laws 1903 and 1907, Member of the Executive Committee 1915, and elected Treasurer in 1916, and Chairman of the Committee on Uniform State Laws of the Louisiana Bar Association beginning with 1909.

HE great Divorce Congress which met in Washington in February, 1916, adopted the following as its first resolution: "It is the sense of the Congress that no Federal Divorce Law is feasible, and that all efforts to secure the passage of a constitutional amendment—a necessary prerequisite—would be futile." The members, therefore, were of the unanimous opinion that uniformity of legislation could only be had through state action.

In adopting this resolution they took a strong stand against the movement which from time to time arises in this country to ask Congress to do everything.

The forty-eight states of this great Union each has its place in our system of government, and each has its duty to perform; and as, under the Constitution, "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," it should be the duty of each state so to frame its laws on general subjects common to the people of every state, as to secure uniformity, that thereby the citizens of each state may, in the common, ordinary business concerns of every day life, know what their rights are in every other state. It is the duty of every lawyer not only to help his clients whose interests are confided to him, to the best of his ability; but he has a higher duty to perform, a duty to the state, and that duty is to assist, as far as may be, in making the laws as simple as possible, so that all may understand them and all be placed on an equal footing thereunder. Every lawyer who loves his grand profession does all he can to keep his clients out of litigation in particular cases, and no lawyer worthy of the name would fail to do that which in a general way prevents or diminishes litigation.

The work of the Commissioners on Uniform State Laws is a work which particularly appeals to the lawyer, who, above all other things, should strive for certainty in the law.

As said by Mr. Charles T. Terry, of New York, in his annual address, as president of the National Conference of Uniform State Laws at Washington in 1914:

> "To make uniform the laws of the various states, and, in making them uniform, to make them clear and simple and certain! It is a great task, but it must be done. The demand for this juristic reform is loud and insistent. Who shall do it? How shall it be done? The one thing that is sure is that our jurisprudence must, in these respects, receive immediate and proper attention.
>
> "The task is a long and difficult one. The responsibilities of it are impressive. The burden can only be sustained by the utmost self-sacrifice and unselfish devotion on the part of every commissioner."

And it may be added right here, that all the commissioners serve entirely without compensation, and many of them pay their own expenses.

In the year 1890 the New York legislature adopted an act authorizing the appointment of "commissioners for the promotion of uniformity of legislation in

the United States," whose duty it was to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates, and other subjects, to ascertain the best means to effect an assimilation and uniformity in the laws of the states, and especially whether it would be wise and practicable for the state of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states. At its session held during the same year, the American Bar Association resolved to recommend the passage by each state and by the Congress of the United States for the District of Columbia and the territories, of an act similar to the first section of that of the state of New York, with the addition of the following subjects: Descent and Distribution of Property, Acknowledgment of Deeds, Execution and Probate of Wills.

It is singular to note that neither of these great bodies suggested uniform laws on commercial subjects; such as Negotiable Instruments, Sales, Warehouse Receipts, Bills of Lading, and Transfer of Stocks in Corporations.

The first conference of commissioners was held at Saratoga, New York, beginning August 24, 1892, and the last was held at Chicago, beginning August 23, 1916.

Louisiana adopted an act in 1902 providing for the appointment of three commissioners, and in the fall of that year, Governor W. W. Heard appointed Thomas J. Kernan, of Baton Rouge, Judge J. R. Thornton, of Alexandria, and the writer; Mr. Kernan died in 1911, and was succeeded by I. D. Wall, of Baton Rouge, and Judge Thornton resigned last year, and has been succeeded by his son, R. S. Thornton, of Alexandria. The writer attended the conference of 1903, and has attended everyone since his appointment, and has been secretary of the Louisiana commissioners since their appointment; at the Convention of 1903, there were but twenty-one states represented and fifteen commissioners present; from time to time, states and other possessions of the United States which had not previously appointed commissioners did so, until, with the appointment of commissioners from Alaska in 1912, every state in the Union (forty-eight), the territories of Alaska and Hawaii, the District of Columbia, and the Insular possessions of the Philippine Islands and Porto Rico, have appointed commissioners, so that every part of the United States is now represented in the conference; the commissioners from three states, however, have never appeared,—Delaware, Kentucky, and Oregon.

Judge W. H. Staake, of Pennsylvania, now the president of the national con-

ference, having been elected in 1915 and re-elected in 1916, has the longest record for continuous service of any of the commissioners; he attended first in 1901, and has been present including 1916, at sixteen annual meetings of the conference.

The greatest work of the conference was the preparation and submission to the states in 1896, of the Negotiable Instruments Law. Six years before the conference was organized, and four years before the suggestion of the appointment of commissioners was adopted in New York, Mr. Frederick G. Bromberg, of Alabama, for many years one of the commissioners from that state, as chairman of the committee on correspondence of the Alabama Bar Association, on August 20, 1886, addressed a letter to the secretary of every Bar Association in the United States, suggesting the preparation and adoption in all the states of a uniform law on this important subject, based upon the English Bills of Exchange Act, which had been adopted in 1882, and this letter may be considered as the beginning of the work of uniform legislation in the United States. Alabama did not, however, adopt the Negotiable Instruments Law prepared by the conference until 1907, and it was represented at the conference for the first time in 1906, the present writer having urged upon the Bar Association of that state in an address he delivered before it in 1906, the advisability of Alabama acting in both these matters. The Negotiable Instruments Law has now been adopted in all the states, excepting California, Georgia, Maine, and Texas; it has also been adopted by Congress for the District of Columbia, in Alaska, Hawaii, and the Philippine Islands, but has not yet been adopted in Porto Rico.

In 1911, it passed the general assembly of California, but was vetoed by the governor; it was also vetoed by the governor of South Carolina in 1914, but passed over his veto.

The last state to adopt the law was Mississippi, this having been accomplished in 1916, through the indefatigable work of Mr. A. T. Stovall, one of the commissioners from that state and now president of its State Bar Association, and with the efforts now under way it will be but a short time, I hope, until the law shall have been adopted universally in this country.

The value of the law as to certainty is shown by the fact that no case involving it has yet reached the Supreme Court of the United States.

For a number of years while the late Mr. Amasa M. Eaton, of Rhode Island, was the president of the conference, he annually prepared a tabulation of the cases were the Negotiable Instruments Law had been construed and applied, and also of cases where it had been ignored and misapplied, and this work is worthy of reading and study by every lawyer interested in the subject.

In addition to the Negotiable Instruments Law, four other great commercial laws were at different times completed by the conference and recommended to the different states,—

The Uniform Sales Act in 1906, and which has been adopted in 13 states and in Alaska.

The Uniform Warehouse Receipts Act also in 1906, and which has been adopted in 35 states, including Alaska, and by Congress for the District of Columbia.

The Uniform Stock Transfer Act in 1910, now adopted in 10 states, and in Alaska.

The Uniform Bill of Lading Act also in 1910, now adopted in 14 states and in Alaska.

I quote the following from an article by Mr. Walter George Smith, one of the commissioners from Pennsylvania, and formerly president of the conference:

"The method adopted by the conference is to employ as the draftsman of an act one who is an expert upon the subject. After this draft has been prepared, it is examined with great care by an appropriate committee and then by the conference in committee of the whole. It is then submitted for criticism to the profession at large and especially to law teachers, and sometimes public meetings are held by the committee, where anyone interested in the subject is welcome to present his views. Another tentative draft is then presented to the conference, and the act may then be approved and recommended to the various states for adoption. In some instances, however, as many as four tentative drafts of an act have been prepared before this final stage has been reached.

"When it is considered that the uniform acts which have emanated from the conference carry no sanction beyond their own intrinsic

excellence, it is remarkable that their acceptance has been so general.

"By slow degrees it has now become known as a body whose labors are marked by exceeding care and proper conservatism. It has striven to avoid the danger of becoming a reforming organization."

Referring to the Negotiable Instruments Act the supreme court of Massachusetts, in the case of Union Trust Co. v. McGinty, 212 Mass. 205, 98 N. E. 679, Ann. Cas. 1913C, 525, said:

"The design (of the Negotiable Instruments Act) was to obliterate state lines as to the law governing instrumentalities so vital to the conduct of interstate commerce as promissory notes and bills of exchange, to remove the confusion or uncertainty which might arise from conflict of statutes or judicial decisions amongst the several states, and to make plain, certain, and general the controlling rules of law. Diversity was to be molded in uniformity. . . . Simplicity and clearness are especially to be sought. The language of the act is to be construed with reference to the object to be attained. Its words are to be given their natural and common meaning, and the prevailing principles of statutory interpretation are to be employed. Care should be taken to adhere as closely as possible to the obvious meaning of the act, without resort to that which had theretofore been the law of this commonwealth, unless necessary to dissolve obscurity or doubt, especially in instances where there was a difference in the law in the different states."

This decision is particularly interesting because it is the first case in which the important question of uniformity of judicial decisions in construing the uniform laws was considered, the court on this point saying:

"In the interpretation of a statute widely adopted by the states to the end of securing uniformity in a department of commercial law, we should be inclined to give great weight to harmonious decisions of courts of other states, even if we were less clear than we are in this instance as to the soundness of our own conclusion."

It became the good fortune of a Louisiana lawyer, Mr. E. T. Merrick (my schoolmate of 1873, 1874, and 1875), to present to the Supreme Court of the United States the first case involving the interpretation of any of the uniform laws prepared by the conference. The case is reported in 239 U. S. 520, 60 L. ed. 417, 36 Sup. Ct. Rep. 194, and is entitled: "Commercial Nat. Bank v. Canal-Louisiana Bank & T. Co. and was heard on appeal from the circuit court for the fifth circuit, which had affirmed a judgment of the United States district court, both courts sitting in New Orleans, and both having declined to give any effect to the provisions of the Uniform Warehouse Receipts Act, which was adopted in Louisiana in 1908.

The Supreme Court, through Mr. Justice Hughes, reversed the judgment appealed from, and maintained the rights of the holder of the warehouse receipts under the law of Louisiana, and on the ground of uniformity, as will appear from the following part of the syllabus:

"That the act is to be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it is a rule of construction that prevents the act from being regarded as an offshoot of local law to be construed in the light of decisions under former statutes of the enacting state, and requires the statute to be construed in the light of the cardinal principle of the act itself.

"The uniform acts relating to commercial affairs have been enacted in various states for the beneficent object of unifying so far as possible under one dual system of government the commercial law of the country, and to give effect, within prescribed limits, to the mercantile view of documents of title, and this principle should be recognized in construing the acts to the exclusion of any inconsistent doctrine previously obtaining in any of the enacting states."

This decision alone justifies all the work which the conference of commissioners has devoted to the work of uniformity of legislation from 1892 to date, because it makes a warehouse receipt under the uniform law of the same legal effect in every state which has adopted the law; and considering the enormous dealings in merchandise by means of warehouse receipts, it seems to me that every state in the Union should now, without hesitancy, adopt the law.

The case just above quoted was followed by the supreme court of Louisiana in the case of Arbuthnot v. Richheimer, decided May 9, 1916, and reported in — La. —, 72 So. 251, reversing the judgment of the trial court.

The first paragraph of the syllabus, prepared by the court, reads as follows:

"The Uniform Warehouse Act construed in conformity with the views expressed by the Supreme Court of the United States in the case of the Commercial Nat. Bank v. Canal-Louisiana Bank & T. Co."

In connection with its public wharves the city of New Orleans has constructed the most elaborate system of public warehouses possibly in the world, and if the decisions reversed by the Supreme Court of the United States and by the supreme court of Louisiana had been affirmed, the operations of the warehouses would have been greatly impeded and curtailed, if not entirely destroyed; because unless the receipts issued for goods in these warehouses carried with them complete and perfect negotiability, few owners of property would care to deposit their property therein.

In the case of Interstate Bank & T. Co. v. Brown, 235 Fed. 32, the court, without referring to former decisions on the subject, and though the point was not necessary to the decision of the case, held that the omission from a warehouse receipt of the rate of warehouse charges and of the warehouseman's advances, would render the receipt not a negotiable receipt under the uniform law.

The National Divorce Congress of 1906, in which every state in the Union but two was represented, delegates also being present from the District of Columbia and from the territory of New Mexico, prepared and recommended to the states a most elaborate law of divorce and annulment of marriage, and the same was approved by the conference of commissioners in 1907, but has been adopted in only three states,—Delaware and New Jersey in 1907, and Wisconsin in 1909,—considerably modified except in New Jersey, and several times amended in Wisconsin; at the last conference, the special committee thereof on marriage and divorce of which Judge Andrew A. Bruce of the supreme court of North Dakota is chairman, was advised by the conference that it was competent for the committtee to consider and report to the conference amendments to this law, and if amended in the one particular hereafter referred to, I believe it will be adopted in many states.

The Supreme Court of the United States in the case of Haddock v. Haddock, 201 U. S. 562, 50 L. ed. 867, 26 Sup. Ct. Rep. 525, 5 Ann. Cas. 1, the majority opinion, concurred in by four other justices, being pronounced by Mr. Justice White, of Louisiana (now chief justice), held in the strongest terms that one of the spouses could not acquire a domicil for the purposes of divorce, and this has been the law of Louisiana for over one hundred years. The uniform divorce law, however, allows this to be done by providing that either spouse may acquire a domicil, and at that domicil suit for divorce may be brought; so that there might be this condition of affairs,—a husband brings a suit against his wife for divorce in one state and she brings suit for a divorce against him in another state, when there would be a race of judicial process to see who could obtain judgment first. At the meeting of the International Law Association at Portland in 1907, when the divorce question was under discussion, Mr. Smith (before referred to), who was chairman of the committee of the Divorce Congress which prepared the law, was forced to admit that under the law as written exactly what I have above outlined might happen, and in this provision is the weakness of the Uniform Divorce Law.

No law should be on the statute book which in effect would allow a husband to kiss his wife good-by, and depart to be married in another state.

No state should have jurisdiction of a suit for divorce unless the cause of action arose therein, or the parties lived therein as man and wife, or unless the marriage was contracted there, where in cases as have sometimes unfortunately happened, the contracting parties separate at the altar; only in this way is there fairness to the defendant; because the spouse leaving the matrimonial domicil or the place of marriage would then know that at any time a suit might be brought for divorce in that state, and therefore he or she could not plead ignorance, as is the case when a new domicil is established by one of the spouses unknown to the other simply as a preliminary to a divorce proceeding.

Two acts completed and recommended to the states in recent years by the conference deserve consideration and adoption; they are: "The Uniform Foreign Wills Act" of 1911 and the "Uniform Probate Act" of 1915; these two acts make valid in every state adopting

them, a will valid where made or valid at the place of the testator's domicil, and recognize the probate of wills granted at the domicil of the testator. The first law has been adopted in ten states and in Alaska, but as to the other, the only state that I know of yet adopting it is my own state, Louisiana.

I was very much surprised to learn a few years ago in a case placed in my hands and still pending, that in New York a will made at the domicil of the testator, and in accordance with the laws thereof, would not be recognized in New York unless made also in accordance with the laws of that state, except as to personal property; and a legatee under such a will in Louisiana stands the risk of losing a very large estate in New York unless, before the case is finally settled, New York adopts the uniform law; not that such adoption would have the effect of depriving anyone of rights acquired previous to the adoption, but because in this particular case, in the absence of legal heirs of the testator, the state would receive the property, and I do not think a state would take property if, when the time comes to finally receive it, there is a law in existence which would give it to the one named by the deceased.

In 1909 there was a great conference in New York called by the committee on commercial law of the conference, at which were represented through their attorneys practically every great railroad system of the United States, and when was discussed from every standpoint the Uniform Bills of Lading Law then under consideration by the conference, and when the committee completed its work the railroads' attorneys expressed themselves satisfied therewith, and led the committee to believe that when sent out by the conference it would be supported everywhere; the conference completed its work the same year. At the time of the completion of this law, the jurisprudence of the Supreme Court of the United States and many of the states including Louisiana was that a railroad or other common carrier was not liable to the holder of a bill of lading acquired in good faith, without notice, and for a valuable consideration, for the value of the goods represented by the bill of lading, unless the goods had actually been received by the carrier.

In other words, a distinction was made in favor of common carriers as to their responsibilities for the acts of their agents acting in the scope of their authority; a merchant gives to his clerk authority to sign promissory notes, but instructs him that he shall not sign nor issue any unless the money is received therefor and placed to the credit of the merchant; the clerk, however, in bad faith and in violation of his instructions, executes notes and gives them to some of his friends as an accommodation, and the friends negotiate them for value before maturity; certainly in such a case the merchant would be liable thereon, and why should not common carriers also be liable under similar circumstances? The distinction was brought about through a decision of the Supreme Court of the United States holding that a bill of lading was both a receipt and a contract, and that in so far as it was a receipt it could like other receipts be explained.

The uniform law, in § 23, holds the carrier liable "if a bill of lading has been issued by a carrier, or, on his behalf, by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading." In states where the law and jurisprudence coincided with the uniform law, the railroads supported it; but in the other states, where the uniform law changed the existing law, they directly or indirectly opposed its adoption, though the law, as before stated, has been adopted in a good many states.

For many years since the adoption of the uniform law, the committee on commercial law of the American Bar Association has been earnestly at work in the effort to have Congress adopt the uniform law so that its provisions would become a rule of practice in the Federal courts; and finally at the last session of Congress the law was adopted, but with several changes insisted upon by the railroad representatives, the effect of one of which was to nullify the provision above quoted so far as large cities are concerned; because there has been inserted in the Federal law in the section above quoted a provision that the authority of

the agent must be not only to issue bills of lading, but to receive goods; and we all know that, except in small places, the clerk who receives the goods is not the one to issue the bills of lading. I certainly hope that at an early date Congress may remedy this defect in the law, and the effort so to do represents a great work for the new president of the American Bar Association, Mr. George Sutherland, Senator from Utah.

The conference of 1916 completed a uniform law of limited partnerships complementary to the Uniform Partnership Act adopted in 1914; but I think one provision thereof will prevent it from being adopted in many states, and that is the provision which provides that a man may be both a general partner and a limited partner in the same partnership at the same time. The conference was very much divided on this question, but the majority approved the report of the committee containing this provision which is a very novel proposition, to say the least of it.

A very important uniform act was discussed in 1916 and referred back to the committee, being a uniform law of conditional sales, but that, too, has a provision which I think will destroy its popularity, and that is for a deficiency judgment where the vendor in a conditional sale elects to cancel the sale and receive back the property.

This law will come up again for final determination in 1917, and I hope this provision may be eliminated.

Another important act which the committee on commercial law has under consideration and which was prepared and partially considered last year is a uniform law on the subject of fraudulent conveyances, which I believe, when completed this year, will be found to fill a long-felt want.

During the discussion of the Uniform Stock Transfer Act in the conference, the question was presented as to which would be the certificate entitled to recognition, the lost certificate, if it should afterwards turn up, or the certificate issued in lieu thereof, and no satisfactory conclusion was reached, but in the case of State ex rel. Louisiana State Bank v. Bank of Baton Rouge, 125 La. 138, 136 Am. St. Rep. 332, 51 So. 95, our supreme court solved the question in this language:

"The issuance by a corporation of a certificate for shares of its capital stock is a declaration to the world that the person named is the owner of the stock called for by the certificate; and a purchaser of the stock, who acquires in good faith, for value, and in the usual course of business, and to whom the certificate, properly indorsed, is delivered, is entitled to be recognized by the corporation as the owner of the stock, and cannot be required, as a condition precedent to such recognition, to litigate his title with a third person, who claims under a certificate which had previously been surrendered and canceled; the question whether the cancelation and the issuance of the new certificate were authorized being one which the corporation and such third person must settle between themselves."

While it is true that in this case the question before the court involved a canceled certificate, the reasoning equally applies to a lost certificate.

For many years the conference has had under consideration a Uniform Incorporation Act, but, owing to the great diversity of opinion on this important subject, the law has not yet been completed, but the failure to complete it is entirely in line with the policy of the conference, which is never to send an act out to the states until every possible objection thereto has been considered and reconsidered, and as far as possible all conflicting views brought into harmony, so that the act when completed will represent the best thought on the subject as found in the decisions of the various courts of last resort.

Independently of commercial matters, the conference has adopted three other laws of great interest to the people of this country and which, while probably never to be adopted as uniform laws, are of great assistance to other states as model laws in legislating on the important subjects represented thereby; these are the "Child Labor Law" completed in 1911, the "Workingmen's Compensation Law" completed in 1914, and the "Land Registration Law" completed in 1916.

The Torrens System of land registration is now the law in fourteen states, all of which except six adopted it after 1904, when the subject was taken up by the conference, and no doubt the publicity given thereto and the educational

campaign conducted thereby have been the moving causes of the adoption of the law in most, if not all, of the states; and so it is to some extent regarding the Workingmen's Compensation laws and Child Labor laws, for no doubt the action of the legislatures of many states was first called to these subjects through the work of the conference.

Certainly the Federal Workingmen's Compensation Law and the Law Prohibiting the Transfer in Interstate Commerce of the Products of Child Labor, passed by Congress at its last session, had their origin entirely in the work of the conference; and so it will be with the Torrens System of Land Registration, which Congress has now under consideration for the District of Columbia.

Mr. E. C. Massie, one of the commissioners from Virginia, and for many years chairman of the committee of the conference "on the Torrens System and Registration of Land Titles," has recently written a history of the law, and all interested in the subject are advised to obtain a copy thereof.

The Federal Commission on Rural Credits, to whose work and reports is largely due the passage of the Act to Establish the Farm Loan Banks in 1914, said in its report to the Senate: "Every student of the subject must conclude that the states should adopt some system of state guaranty of title as, for instance, the Torrens System. It is against the best interest of the general public to have possible legal disputes over the ownership of land."

And in the report made February 15, 1916, by the Senate committee on banking and currency this appears:

> "It is well understood that the laws in the several states vary as to land titles, registry, exemption, homestead rights, foreclosure, and equities of redemption. It is therefore made the duty of the farm loan board to investigate these questions in each state, and to declare mortgages ineligible as security for farm loan bonds in those states where the laws do not give adequate protection to those loaning on first mortgages. Very few, if any, states will fall within this rule, and they will doubtless amend their laws promptly in order to bring the benefits of the farm loan system within reach of their citizens." (Senate Calendar No. 135, Report No. 144, pp. 12–13.)

Mr. Massie crystallizes those who reports as follows: "In other words, the states are put on notice that they must adopt the Torrens System if they wish to 'bring the benefits of the farm loan system within reach of their citizens.'"

The Family Desertion Act, adopted by the conference in 1910, has been adopted as written in eight states, and has proved a model for many other states, and so with the Marriage Evasion Act, which has been adopted in four states.

Two other important acts completed by the conference, the Marriage and Marriage License Act and Cold Storage Law, have not yet been adopted in any state (except that the latter has become law in Maryland), but no doubt will be considered by many of the legislatures which met in 1917.

The suggestion of the conference, that the Federal Pure Food and Drugs Act, amended so as to make it a state law, should be adopted in all the states, has borne fruit only in my own state of Louisiana, where the law was adopted in 1914.

The Uniform Acknowledgment Act completed by the Conference in 1914 was adopted by Louisiana in 1916.

In 1915 the conference created a new committee "On the Adoption of Approved Acts," the name of which, however, was in 1916 changed to "The Legislative Committee," and through its most untiring and active chairman, Mr. S. R. Child of Minnesota, it is bringing to the attention of the general assemblies of the different states the importance of adopting the uniform laws; and a special campaign will be conducted in each one of the states where the general assemblies meet next year by this committee, and large results will no doubt flow from its work.

I must mention the work of one other committee, that "on the Uniformity of Judicial Decisions," of which Judge Henry Stockbridge of the supreme court of Maryland is chairman; this committee, by an elaborate system of card indexes, has placed at the disposal of every judge and lawyer of the United States every decision where any of the provisions of any of the uniform laws have been construed and so arranged by sections of

the law that in a moment a reference to any decision can be furnished. I have had opportunity to use the work of this committee, and I understand that the judges of many courts of last resort have kept in touch with it so as to assist them in reaching proper conclusions on what is now a recognized branch of the law.

The Library of Congress, at the suggestion of Mr. Child, has arranged for a department "On Uniform Laws," and with separate classifications and indexes has made it easy for any student of the subject to familiarize himself with all available literature on this subject.

A movement is now under way in Canada to unify the laws of the different provinces, and to this work, Mr. Charles T. Terry has given great assistance, and at the last conference, briefly stated what had been done and what was contemplated in this regard.

Conferences have been held under the auspices of the United States government regarding Uniform Commercial Laws for the Twenty-one American Republics; and this work, if successful, will be the greatest help to business of all kinds in America.

Two conferences have been held at The Hague in the effort to prepare a uniform law of bills and notes for the entire world and though the European War prevented the full fruition of this work, it is certainly to be taken up in later years and carried to a successful termination.

The tentative law prepared by these conferences is based on the English Bills of Exchange Act and the Negotiable Instruments Law prepared by the National Conference of Commissioners on Uniform State Laws, though in some respects, though not the most important, it follows neither.

H. O. Hart

The Dialogue

Where Judges grave were holding court,
King Reason ventured to resort.

Then Conscience came and bowed his head,
And to the ruler wisely said:

"These sacred messengers of ours
May exercise despotic powers,

"And still when love and mercy blend
No righteous law will they offend.

"Nor rich nor poor, nor high nor low
In granting Justice will they know,

"And if in doubt on points of law
Where sages should distinctions draw

"May common sense and fairness show
The way their judgment ought to go.

"If passion, greed, and skill unite
The spirit of the law to smite,

"God give them courage then to be
The guardians of liberty.

"Then with the rights of all secure
Their sovereign nation shall endure."

The Judges bowed and said, "'Tis well
In every virtue to excel."

And thinking so, their court became
Deserving of undying fame.

Wm. D. Lutten

A National System of Uniform State Laws

BY HON. GEORGE WILLIAMS BATES

of the Detroit Bar

[Ed. Note—The author of this article was admitted to the bar of Detroit in 1874; has been Commissioner on Uniform State Laws for Michigan since 1905; is a member of the American Bar Association, the American Historical Association, the National Geographical Society, and a Councilor of the Archæological Institute of America.]

HE subject of Uniform State Laws is a matter of general interest. The object is to secure uniform laws on all matters of general legislation, particularly that of commercial law and all kindred branches of the law. These acts are formed and adopted by a National Conference of Commissioners from the several states and territories, who meet annually to consider all acts, which have been prepared by someone especially qualified to draft the act on the particular subject; and after careful consideration by the Conference amendments are made when the act is printed as a tentative draft. After it has assumed such shape as meets with the approval of the Conference, it is finally adopted and becomes the uniform act. It is then submitted to the legislatures of the several states for adoption, when if adopted it becomes the uniform law in all such states and territories.

These Commissioners are appointed by the governors of the several states, which now number forty-eight as represented by such Commissioners. The District of Columbia and the several territorial possessions of the United States are alike officially represented in the National Conference either pursuant to state law or by gubernatorial appointment.

There are duly appointed Commissioners for each of the fifty-three legislative jurisdictions.

The organization in its present form dates from 1892, but prior to that time for a number of years uniform state laws were the subject of report and discussion by the American Bar Association, with a view to promoting measures to overcome delay, uncertainty, and conflict of judicial administrations. In its present form the organization recently held its twenty-fifth National Conference.

It is now proposed by the National Conference to take up the subject of publicity in a more systematic manner, and through its legislative committee push the adoption of the approved measures, so as to more effectually and completely achieve the purpose for which the commissioners are appointed. This is to secure for the United States on certain cardinal and essential subjects a national system of uniform state laws, for the mutual and reciprocal protection and welfare of the several states and territories.

The subject chosen for uniform state action includes commerce, industry, transportation, and finance, and many sociological and civic measures. As related to the subject of rural credits, two classes of the uniform acts are especially worthy of mention; namely, the several Uniform Commercial Acts and the Uniform Land Registration Act.

The Negotiable Instruments Law.

The Negotiable Instruments Law, approved in 1896, was the first Uniform Act submitted to the National Conference, and is now the law of forty-eight states, including Alaska, Hawaii, the Philippine Islands, and was adopted by Congress for the District of Columbia.

This act has been cited in 750 American decisions.

The latest indorsement of the principle of commercial uniformity is the opinion of Mr. Justice Hughes, of the Supreme Court of the United States, January 10, 1916, in Commercial Nat. Bank v. Canal-Louisiana Bank & T. Co. 239 U. S. 520, 60 L. ed. 417, 36 Sup. Ct. Rep. 194, in which the court upholds the Uniform Warehouse Receipts Law. The Supreme Court determined the issue, and turned over the cotton to the holder of the warehouse receipt, on the principle that the purpose of the act to promote uniformity of judicial administration as between the states takes precedence over all previous statutes and decisions of the states. The purpose and effect of the Uniform Negotiable Instruments Act is to increase the negotiability of all negotiable instruments such as checks, drafts, promissory notes, thereby giving to all such paper greater legal certainty and facility in all commercial and financial transactions, and thus add to the efficiency and economy of business.

Hon. Geo. Williams Bates

Georgia, Mississippi, and Texas are the three cotton states which, to date, have not adopted the Uniform Negotiable Instruments Act, and Maine among the New England states.

One of the effects of this law is to reduce the prevailing interest rates on commercial paper by enabling states adopting it to have a more certain and economical command of the capital of the country at large for development. It is the general opinion that the comparatively high interest rates on farm loans prevailing in these states, as shown by the investigations of the Department of Agriculture, is doubtless due in part to the fact that failure to adopt the Uniform Negotiable Instruments Act deprives their states of one of the essential features in securing, on most favorable and economical terms, the capital and financial facilities of the country at large. The next in importance among the Uniform State Commercial Acts, approved and submitted by the National Conference to the states for general adoption, is the Uniform Warehouse Receipts Acts. This act is now ineffective operation in thirty-five states. It has been of great service in financing such staple crops and products as grain, cotton, and flour, which command the available financial facilities of the country at minimum rates, and the warehouse receipts representing these products became available security under the operation of the uniform act.

The Federal Reserve Board has been of great service in extending the adoption of the Uniform Warehouse Receipts Act by the cotton states, and recognized this law as the most efficient means in financing cotton.

The most effective means of moving the wheat crop of the upper Mississippi valley was found in the Uniform Ware-

house Receipts Act, which first demonstrated its usefulness in financing commerce and agriculture on a large and economical scale.

Chicago and Minneapolis bankers testified before the Federal Reserve Board that in many respects they prefer the warehouse receipt on state inspected wheat to a government bond as security for commercial paper.

It is said that Minneapolis and Duluth grain elevators, which handle upwards of 150,000,000 bushels of the Minnesota-Dakota spring wheat crop, commonly float their commercial paper on warehouse receipts at 3 to 4 per cent.

Ohio, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Nebraska, Kansas, and South Dakota successfully finance their staple crop under the Uniform Warehouse Receipts Law. All the Pacific states and part of the Rocky Mountain states are under the warehouse act.

Southern states adopting the Uniform Warehouse Receipts Act include Louisiana, Maryland, Virginia, Tennessee, and recently Alabama and Arkansas. The Southern states which have not adopted this act are Georgia, Florida, North and South Carolina, Mississippi, Oklahoma, and Texas, and they thus have not had the benefit of the act in financing their crops.

The testimony of the Federal Reserve Board, of the State Commissioners on Uniform State Laws, and of bankers, merchants, and warehousemen generally, is uniform on the subject that the Uniform Warehouse Receipts Act is an agency of the greatest importance to utilize at favorable rates the available financial machinery of the country in handling such agricultural staples as cotton.

It is obvious, as has been said, to the ordinary observer that commercial paper, in order to pass current at minimum rates, must be so fixed and certain in its character that no reasonable question can arise as to its legal validity; and to secure its legal standing it is essential that the states over which it passes current should have a common legal standing, understood generally by the financial institutions and investors of the country.

Other Uniform Commercial State Laws.

Other Uniform Commercial Acts approved and submitted by the National Conference include the following:

In 1909, the Uniform Bills of Lading Act, which is now adopted by 14 states, including such states as New York, Massachusetts, Pennsylvania, Maryland, Louisiana, Ohio, Illinois, Michigan, and Iowa.

In 1906, the Uniform Sales Act, which has been adopted by 14 states, including Arizona, Connecticut, Illinois, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Wisconsin, and Alaska.

In 1909, the Uniform Stock Transfer Act, which is the law of 11 states, including Massachusetts, Rhode Island, New Jersey, New York, Pennsylvania, Maryland, Louisiana, Ohio, Michigan, Wisconsin, and Alaska.

And in 1914, the Uniform Partnership Act, which has been adopted thus far in 3 states, including Maryland, Pennsylvania, and Wisconsin.

The purpose and effect of these uniform commercial acts have been well stated by Mr. S. R. Child in a statement to the joint committee on Federal rural credits, United States Senate, 1916:

> The purpose and effect of these uniform commercial laws are to carry out the general principle, in harmony with the modern development of commerce, finance, and industry, and with the business of the country as conducted through such channels as the railway, telegraph, long-distance telephone, mail, express, waterways, commercial paper, bond and stock securities, and the host of commercial agencies, and banking and investment institutions, which are no longer subject to state boundaries, but pass current in all directions and for all distances, and only under uniform commercial laws, state and national, is the efficient and economical conduct of the business of the forty-eight states of our Union to-day feasible. The state which neglects to come within the realm of modern uniform commercial laws simply bars its people, its resources, and enterprises from those common channels of finance which insure the maximum volume of business at the minimum cost for the employment of capital.

There are in addition the following acts:

In 1907, the Uniform Divorce Act, which is the law of 3 states, including Delaware, New Jersey, and Wisconsin.

In 1911, the Uniform Child Labor Act.

In 1911, the Uniform Probate of Foreign Wills Act, now adopted in 11 states, including Colorado, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Nevada, Rhode Island, Washington, Wisconsin, and Alaska.

In 1914, the Uniform Cold Storage Act, now adopted in 1 state, Maryland.

In 1914, the Uniform Workmen's Compensation Act.

In 1914, the Uniform Acknowledgment Act, now adopted in 1 state, Maryland.

Farm Loan Rates and Uniform Commercial Laws.

The practical value of the Uniform Commercial Laws in reducing interest rates by the enlistment of outside capital is shown in the statistical tables of the Department of Agriculture on the subject of comparative state rates on short-term farm loans; and also on farm mortgages, as compiled under the direction of Secretary Houston, and laid before the subcommittee on land mortgage loans of the joint committee on rural credits of the United States Senate by Dr. Thompson, specialist in charge of rural organization. It was stated that among the acknowledged causes which affect comparative farm rates for use of capital as between states similarly favored as to climate, soil, and industrial population are: Accessibility to financial resources, including financial centers and general savings for investment purposes; accessibility to commercial resources, including transportation and banking facilities; and accessibility to markets. It was also said by Mr. Child, before the Senate Committee, that "the Uniform State Commercial Acts are active, direct, and vital factors in giving the agriculture of a given state greater accessibility both to the financial and commercial resources and facilities of the country at large. They have the same effect in financial channels as railways and telegraphs, postal rural routes, and parcel-post routes possess in regard to transportation and commercial communication."

Maine is the only New England state which has not adopted any of the uniform commercial acts. The fact is that on loans to farmers on personal security, the average total cost to the farmers of Maine is 7.7 per cent interest and commission, as compared with 6.5 per cent as the average for the other five New England states. It is also the fact that interest rates on farm loans are nearly one fifth higher for this New England state, which has neglected to avail itself of the advantage of the uniform commercial laws; while in the South the stress of the European War as affecting the financing of cotton was felt with special severity in Georgia, Mississippi, and Texas, which have adopted none of the uniform commercial acts, and Oklahoma, Alabama, Arkansas, and the Carolinas, which, when the war opened, did not have the Uniform Warehouse Receipts Law as a basis for loans in warehouse cotton.

But in Louisiana, Massachusetts, Virginia, and Tennessee, the agricultural industry and domestic commerce were provided with the Uniform Negotiable Instruments Act and the Uniform Warehouse Receipts Act, while in Louisiana and Maryland also the Uniform Stock Transfer and the Uniform Bills of Lading Acts were in force. So that under the operation of uniform commercial laws these states found little difficulty in commanding adequate capital at reasonable rates.

Farm Mortgage Loans and Uniform Land Registration.

In 1916, the Conference also adopted the Uniform Land Registration Act, popularly known as the Torrens System, which is now the law in one state, Virginia. There are similar land registration acts in thirteen states, including California, Colorado, Illinois, Massachusetts, Minnesota, Mississippi, North Carolina, South Carolina, New York, Nebraska, Ohio, Oregon, and Washington, and Hawaii and the Philippine Islands.

The basis of a rural credit system in this country similar to that of Europe based on long-term farm mortgages must be some method of uniform land registration by which titles will be certain and standard, and thereby become un-

questioned security for bonds or debentures of any Federal system of land banks.

Uniform state laws as well as the Federal Credits Act are essential to such a system. Thus fourteen states have already adopted the Torrens System of land title registration; and while these laws are not in all respects uniform they are nearly so to a degree sufficient to satisfy all practical requirements.

Mr. Eugene C. Massie, of Richmond, Virginia, an authority on the so-called Torrens System, delivered an able and instructive address on the subject of "Commercial Land Titles," before the Georgia Bar Association, January 4, 1915. He finds that the Torrens System is in operation throughout Australia, Tasmania, New Zealand, a great portion of the Dominion of Canada, and in a modified form in England. In this country it is in force in the twelve states mentioned, and recently adopted in South Carolina and Virginia. He also said: "Nothing short of registered title can give the land any of the true attributes of a commercial asset. To answer the great public needs, we must make the land in a sense negotiable."

Applying the principle to the state of Georgia, he says: "It also appears from said report that Georgia's realty has a value more than eleven times greater than all the merchandise in the state, and more than eleven times greater than all the live stock in the state, and more than eleven times greater than all the bank shares in the state. I beg of you, therefore, to consider how enormously the bankable capital of your state would be increased if your real estate assets were made available for your use in business."

Honorable David F. Houston, Secretary of Agriculture, testified before the Senate Committee that there are only $3,500,000,000 of farm-mortgage loans in this country on $40,000,000,000 worth of farm property. "Still the clamor of the rural districts for capital to develop the agricultural industry is country wide."

Secretary Houston also stated that the rate of interest with commission on farm mortgage loans in the United States ranges from 5.3 to 10.5 per cent, the average rate in no less than twenty different states being 8 to 10 per cent; while the prevailing farm loan rates under modern rural-credit systems in Germany, France, Norway, Denmark, Great Britain, and Australia are 3½ to 4 per cent.

Honorable John Skelton Williams, Comptroller of the Currency, also testified before the same Senate Committee, that even on 30, 60, or 90 day loans for crop-moving purposes, the farmer is entitled to as low a rate as commercial paper. On long-term farm mortgages handled under the provisions of such an act as provided for in the Hollis bill (§ 2986), there is no reason why farm mortgage rates in the United States should not approximate the European basis; especially in view of the fact that commercial paper in the United States floats at as low rates as in Europe.

The effect, then, would be that, under the proposed rural-credits plan—with a Federal farm loan board and twelve regional farm land banks to give negotiability to the agricultural lands of the United States — the aggregate, actual capital of America available in negotiable form for bankable purposes would readily be more than doubled, and thereby become one of the greatest and most dependable assets in our national finance.

The part which the states will play through the operation of the Uniform State Laws is to present a line of state legislation and judicial harmony and solidarity in accordance with the principles of the Federal Rural-Credits Act.

In an article on rural credits published in the Banker's Home Magazine of May, 1914, the necessity of unified action on the part of the states, in order to give farm loans a national market, is thus stated:

> It is idle to presume that any local banking institution can issue any form of security based on land which will command a national market, and it is equally certain that no success can attend any attempt to reach the general investing public for the benefit of the landed interests, unless a national market is secured.

The Senate Joint Committee in its report on Rural Credits to Congress, January 3, 1916, with the draft of a bill "to

provide a system of land-mortgage credits to the United States under Federal supervision" (H. Doc. No. 494, p. 16), has this to say of necessary state legislation:

> It is well understood that the laws of the several states vary as to land titles, registry, exemptions, homestead rights, foreclosures, and equity of redemption. It is therefore made the duty of the farm loan board to investigate these questions in each state, and to declare mortgages ineligible as security for farm loan bonds in those states where the laws do not give adequate protection to those loaning on first mortgage.

In this is to be found the principle which accords with that on which the National Conference of Commissioners on Uniform State Laws has proceeded for many years, and there is no doubt that a degree of joint co-operation between the farm loan board, when organized, and the National Conference, may be effected, and that the legislative committee of each state and the three state commissioners will be able to forward the plans of the Senate Committee as provided in the Hollis bill, as to desired uniform state laws, as a basis for the successful establishment of a Federal system of rural credits.

Section 32 of the Rural Credits Bill, authorizing the farm loan board to declare ineligible for farm loans the lands of such state as fails to provide the necessary uniform laws relating to the conveying and recording of land titles, and the foreclosure of mortgages and other instruments securing loans, will have an important effect in securing a more prompt compliance with the state uniformity principle.

Honorable David Lubin, delegate of the United States for the International Institute of Agriculture, states "that his proposition to adapt the Landschaft system of rural credits, established for 151 years in Germany, to conditions in this country, upon which a part of the plan as embodied in the Hollis bill is apparently modeled, presupposes not only a Federal law, but a uniform state law, and that the result of such uniform legislation in Germany has been to make the bonds secured by mortgages on lands more popular and stable than the Imperial Government bonds, with interest rates thereon at 3½ to 4 per cent."

It appears that the farm property of the United States in 1909 was valued in the census at $40,000,000,000 and will doubtless exceed $50,000,000,000 in the census now being compiled.

"What is required," says Mr. Massie, "is a proper mechanism for effectively financing this greatest American asset."

Under these circumstances, there is every reason to believe that under a proper Federal system with effective state co-operation under uniform state laws, the American farmer will eventually enjoy the same adequate and economical use of capital which is found among the most favored agricultural countries of Europe.

The Uniform Torrens Act Means of Uniformity in Registration of Land Titles.

In view of the Federal Rural-Credits Act, the Torrens Act assumes a vastly greater importance than it might have had if not so related to the Credits Act.

It is now one of the most important and serviceable acts adopted by the National Conference. It is claimed, on the one hand, that the Torrens System of Land Title Registration is revolutionary: and that it is an attempt at radical reform void of practical beneficence. But the fact that fourteen states have already adopted the Torrens System for their own use, and the majority of these are among the leading states of the country, —that fact is proof that the Torrens System has been accepted in our country as "a desirable, legal process, and points unalterably to the need of immediate attention and legislative action throughout the country."

If, in addition to this, an argument is drawn from the operation of the system that should show that "certificates of registration" under the plan were calculated to take their place among the negotiable documents of title with which the Conference has, for so many years, been dealing with respect to personal property, if the adoption of the uniform Torrens Act was to bring about, in whole or in part, something of the same "flu-

idity or negotiability of land," as has been brought about in the case of personal property by the uniform acts mentioned, then the National Conference would be required to extend the principle heretofore approved and tested. "To this new subject," says President Terry, "by every consideration of its purpose, its duty and its desire, the Conference would be driven to the enthusiastic support of uniformity in respect of an adequate Torrens Registration Act."

The main argument against the adoption of the Torrens System is drawn from the antiquity of the old law and the old custom, but nevertheless it is only a part of true wisdom to see if perchance there may be "defects discovered, improvements inaugurated, and conditions bettered," by extending through the process of unification, even though such policies may have been in themselves reversals of what had come to be considered settled doctrines.

To propose that, because a system of recording titles and conveyancing had been in vogue since ancient times, therefore it is the best possible system, would be the extreme of unreasonable logic. "If the same reason were applied to all the world's business and relations, it would insure the death of progress."

Tested by the actions of states as such, we find that most of those who have seriously considered the respective merits of the two systems have abandoned the old and adopted the new.

Some of the fourteen states which have been wont to be recorded as leaders in improved legislation have thrown their conclusions and the weight of their influence on the side of the Torrens System.

Tested by individual opinion of those whose opinions are entitled to great consideration and persuasive force, we are drawn to regard the Torrens System as not only expedient, but, in the highest degree, beneficent and desirable.

Mr. Justice Hughes, when governor of New York, set the stamp of approval upon the system by signing a bill acknowledging it, after a thorough-going debate and investigation in which those arrayed on both sides had presented their arguments at their best.

A portion of the report of the Commission selected to consider this system, prepared after it had sifted the factors pro and con, and viewed the subject from all sides, both as a matter of fact and law, makes this significant statement:

> The method [referring to the old method] which is used in New York state and most of the states in this country, grows more cumbersome as it becomes older, and in spite of efforts to make it less burdensome is tending to break down of its own weight. The multiplication of records and complication of titles, and the repeated expense of re-examination and the delays incidental thereto, should be avoided, if any possible method of doing so can be devised. We are clearly of the opinion that a system of registering titles may be put into operation in this state, in such manner as to avoid these and other difficulties incidental to the present system, and to become of much utility and advantage to conveyancers and owners of real property.

The Commission accordingly recommended the Torrens System of Land Title Registration, and drafted a proposed act, which was passed by the legislature and went into effect on the 1st day of February, 1909.

There is now no question of its constitutionality.

The leading Massachusetts decision is that rendered by Mr. Justice Holmes, now sitting on the bench of the United States Supreme Court. Tyler v. Judges of Ct. of Registration, 175 Mass. 71. 55 N. E. 812, 51 L.R.A. 433, id. 179 U. S. 405, 45 L. ed. 252, 21 Sup. Ct. Rep. 206. See also People ex rel. Deneen v. Simon, 176 Ill. 165, 68 Am. St. Rep. 175, 52 N. E. 910, 44 L.R.A. 801; Waugh v. Glos, 246 Ill. 604, 138 Am. St. Rep. 259, 92 N. E. 974; Peters v. Duluth, 119 Minn. 96, 137 N. W. 390, 41 L.R.A.(N.S.) 1044; People ex rel. Smith v. Crissman, 41 Colo. 450, 92 Pac. 949; Robinson v. Kerrigan, 151 Cal. 40, 121 Am. St. Rep. 90, 90 Pac. 129, 12 Ann. Cas. 829; State ex rel. Douglas v. Westfall, 85 Minn. 437, 89 Am. St. Rep. 571, 89 N. W. 175, 57 L.R.A. 297; and American Land Co. v. Zeiss, 219 U. S. 47, 55 L. ed. 82, 31 Sup. Ct. Rep. 200.

On the general character and effect of the Torrens System, President Terry, of the National Conference, says:

> Tested by business beneficence, the Torrens System would seem to satisfy, to the full, the

most exacting requirements. Ease in the disposition of property, convenience of transfer, availability of assets, and values for commercial needs and mercantile contingencies, all these attributes would seem to fairly attach to land under the ideal Torrens Law.

The element of uniformity involved in these laws is a matter of equal importance, and this comes to pass by their universal adoption by the different states. To secure this, there must be that uniformity of judicial decision, if the work is to achieve its full accomplishment, and, as already stated, the courts are inclined to follow the construction placed upon these acts by the decisions in other states, as stated in Brown v. Brown (1915) 91 Misc. 220, 154 N. Y. Supp. 1098, by Ransom, J.:

> Learned counsel for the defendant makes a most persuasive argument for a ruling in this state, that a payee be given no immunity from equities existent between the maker and his immediate transferee. But these considerations are far outweighed, in my opinion, by the importance of nation-wide uniformity in the law as to commercial paper and by the many evidences that, in enacting the uniform statute, the legislature sought to secure uniformity in the application of the law, and not merely in its phraseology. When a question arises in one of the uniform statutes, and courts of this state have not yet passed upon the intepretation of the portions of the statute involved, I conceive it to be the duty of the trial courts, in the interest of a real uniformity in the application of these commercial enactments, to adopt and follow here the interpretation adopted by the courts of other commonwealths.

In no other way has the business of the country been so facilitated and made easy and certain as by the Uniform Commercial Acts and the uniform construction placed upon them. It is generally considered that the Conference had attained the acme of its service to the cause of uniformity, when it adopted and secured their passage into state law, the several uniform acts already mentioned as affecting the transaction of business; but it adopted in the Torrens System a more radical and far-reaching act in its consequences and in facilitating the conveyancing of real estate, establishing the certainty and security of its title, and in making the vast farming sections of the country available as a means of security for farm mortgages.

The successful operation of the Federal Rural-Credits Act is in fact dependent upon the universal adoption of the Torrens System, so that what is so essential to the prosperity of the farmer can only be made available by the operation of that system. His registered title becomes a commercial asset and makes the land negotiable. It acquires something of the same "fluidity or negotiability" of land as has been brought about in the case of personal property by these uniform acts.

In no other respect is the great efficiency of these uniform acts more apparent in all the varied interests of the country than in the uniformity of legislation which the universal adoption of these acts secures. Then these act on matters which, in their effect upon the citizens of their respective states and their rights, overleap the geographic boundaries of the separate states, and make the law of the various states uniform and clear in their uniformity. The desire for uniformity is still a beacon light of hope for those interested in the work of the Conference.

When there is added, therefore, to the satisfaction exhibited on the part of the chief executives and the legislatures of the various states of the Union in the work of the Conference on Uniform State Laws, the very distinct and critical commendations of the courts in the course of judicial opinions upon cases before them involving the uniform laws, it may be said, with reasonableness, that the success of the movement is demonstrated.

George Williamson Pate

The History, Personnel and Methods of the National Conference of Commissioners on Uniform State Laws

BY GEORGE B. YOUNG

Secretary of the Conference

THE National Conference of Commissioners on Uniform State Laws is an association of Commissioners and representatives of the various states, territories, districts, and insular possessions of the United States organized for the purpose of promoting uniformity in state laws on all subjects where uniformity is deemed desirable and practicable.

At the present time the membership of the National Conference of Commissioners includes Commissioners and representatives of every jurisdiction within the United States.

In 1882 the Alabama State Bar Association organized a committee on correspondence which took up, with the various Bar Associations of the country, the question of uniformity in state legislation. Of this committee Frederick G. Bromberg, of Mobile, Alabama, was chairman, and from the organization of the conference he has been a Commissioner from the state of Alabama.

In 1888 an Act to Create a Board of Commissioners to Promote Uniformity of Legislation in the United States was introduced in the senate of the state of New York.

In 1889 a resolution was passed by the American Bar Association favoring the appointment of Commissioners from various states to devise plans and methods for bringing about uniformity of state laws on various subjects mentioned. The legislature of New York, in 1890, enacted the law above mentioned, which had been introduced in the legislature of that state in 1888, and, on the invitation of the board created under the authority of that act, twelve Commissioners representing seven states met at Saratoga, New York, in August, 1892, and organized the Conference of Commissioners on Uniform State Laws.

The Commissioners attending the first meeting were: Alfred B. Robinson, of Delaware; Peter W. Meldrim, of Georgia; Edmund H. Bennett, Leonard A. Jones, and Frederic J. Stimson, of Massachusetts; Sullivan M. Cutcheon, of Michigan; Henry R. Beekman, Irving Browne, William L. Snyder, of New York; R. Wayne Parker, of New Jersey; Ovid F. Johnson, Robert E. Monaghan, of Pennsylvania.

Since 1892 the Commissioners have met annually at the place of, and just preceding, the meeting of the American Bar Association, and during that time the National Conference of Commissioners have drafted, approved, and recommended to the various states the following uniform acts:

Uniform Acknowledgments Act, approved in 1892, adopted in 5 states.

Uniform Act as to Sealing and Attestation of Deeds, etc., approved in 1892.

Uniform Execution of Wills Act, approved in 1892.

Uniform Probate of Foreign Wills Act, approved in 1892 and 1910, adopted in 11 states.

Uniform Days of Grace Act, approved in 1892.

Uniform Table of Weights and Measures, approved in 1892.

Uniform Negotiable Instruments Act, approved in 1896, adopted in 48 states.

Uniform Migratory Divorce Act, approved in 1901.

Uniform Divorce Procedure Act, approved in 1901.

Uniform Insurance Policies Act, approved in 1901.

Uniform Sales Act, approved in 1906, adopted in 14 states.

Uniform Warehouse Receipts Act, approved in 1906, adopted in 35 states.

Uniform Marriage and Divorce Act, approved in 1907, adopted in 3 states.
Uniform Stock Transfer Act, approved in 1909, adopted in 11 states.
Uniform Bills of Lading Act, approved in 1909, adopted in 14 states.
Uniform Family Desertion Act, approved in 1910, adopted in 8 states.
Uniform Marriage License Act, approved, 1911.
Uniform Child Labor Law, approved in 1911, adopted in 1 state.
Uniform Marriage Evasion Act, approved in 912, adopted in 4 states.
Uniform Foreign Acknowledgments Act, approved in 1914, adopted in 2 states.
Uniform Partnership Act, approved in 1914, adopted in 3 states.
Uniform Cold Storage Act, approved in 1914, adopted in 1 state.
Uniform Workmen's Compensation Act, approved in 1914, adopted in 1 state.
Uniform Foreign Probate Act, approved in 1915, adopted in 1 state.
Uniform Land Registration Act, approved in 1916, adopted in 1 state.
Uniform Limited Partnership Act, approved in 1916.
Uniform Extradition Act, approved in 1916.

The Conference has approved and recommended the Federal Pure Food Law, adopted in one state.

The work of this Conference has been careful and thorough. The method adopted in drafting and bringing to perfection the various acts which have been put out by the Conference is to refer the subject-matter to a committee. This committee studies the subject, and, either through some member of the committee or an expert draftsman employed for the purpose, prepares a tentative draft of an act. In the case of commercial acts experts have always been employed. The draft prepared is submitted to the committee, and gone over carefully by the committee in a meeting to consider the act and put into such form as meets the approval of the draftsman and the committee. The draft is then submitted to the Conference, and is considered section by section and line by line in committee of the whole, after which the act is recommitted to the committee for further revision and work. This process is repeated until the act is finally brought into form that meets the approval of the Conference. Some of the acts have been considered by the Conference in the manner indicated six or seven times, and none are put out until they have been considered by the Conference at least twice, and usually three, times. The Corporation Act, which has not yet been approved, has been drafted five times, and is not yet completed. Other acts have been drafted many times.

The personnel of the Conference is such as to justify the expectation of very careful and accurate work. Among its members are numbered judges of the court of last resort of several of the states, prominent law professors, and leading lawyers in active practice.

The Commissioners work without compensation. In some of the states, acts have been passed providing for the payment of their actual expenses in connection with the work of the Conference, and in other states the Commissioners pay their own expenses. It is a work of love and patriotism, and not of pecuniary advantage to the Commissioners.

In addition to the acts which have been approved, the conference is now working upon Acts to Make Uniform the Law of Private Corporations, Fraudulent Conveyances, Conditional Sales, Use of Automobiles, Judicial Determination of Industrial Disputes, the Use and Abuse of the Flag, and other important subjects.

The present officers of the Conference are:

President—Wm. H. Staake, 648 City Hall, Philadelphia, Pa.

Vice-President—Stephen H. Allen, Topeka, Kansas.

Treasurer—W. O. Hart, 134 Carondelet St., New Orleans, La.

Secretary—George B. Young, 1 Heaton Block, Montpelier, Vt.

There are four standing committees,—the executive committee, the committee on scope and program, the committee on publicity, the legislative committee, and twenty special committees.

The work of the Conference has been of such a character as to merit and to receive high praise and recognition.

The Supreme Court of Baseball

BY CHARLES JACOBSON

of the Little Rock, (Ark.) Bar

NIQUE in the annals of contemporaneous jurisprudence is the supreme court of baseball, otherwise officially known as The National Commission. Supreme in the finality of its decisions, it is the *sine qua non* of our national sport, the last resort for disputatious players and owners. It is a tribunal which, when acting within its jurisdiction, admits of no appeal from its mandates except to the courts of the country, and the strength and justice of its existence and activities is shown in the minimum number of controversies which find their way into the courts.

The National Commission was created by what is known as the national agreement for the government of professional baseball, which agreement was entered into at Cincinnati, Ohio, on September 11, 1903, between the two major leagues and the National Association of Minor Leagues, which, as its name implies, is an association composed of all minor leagues receiving protection. Minor leagues include all leagues other than the two majors.

The National Commission.

This is composed of the presidents of the two major leagues and a third person selected by them annually. The Commission selects a secretary and such other help as is needed. It is composed of Ban B. Johnson, John K. Tener, and August Herrmann, the latter being the third man selected by the first two named. The Commission holds regular terms, and has the power to inflict and enforce penalties and suspensions upon the parties to the agreement. Whenever a player is claimed by both a National and American League club, the right to the service of the player is established by the chairman of the Commission who is always the third person selected by the president of each league. The conclusions on the law and evidence must be arrived at without the aid of either of his associates. The same procedure is followed in the determination of any other issue between major league clubs; that is, between the American and National.

Whenever a National and Minor League club cannot settle their differences over a player, the testimony is heard and the case adjudicated before the chairman of the Commission, and the member representing the American League, likewise, if the controversy is between the American and Minor League, it is heard and adjudicated by the chairman of the Commission and the National League representative. If the chairman and the other member of the Commission entitled to vote cannot agree, the chairman's finding shall determine the case.

A national board of arbitration is selected at the annual convention of the National Association of Minor League Baseball Clubs, which board hears and determines all controversies between Minor League players, owners, and players and owners, its finding being in writing but subject to appeal to the National Commission.

To this extent the National Commission exercises appellate jurisdiction, while, in all other cases, its jurisdiction is original.

Every finding of the Commission must be reduced to writing and signed by the member or members upon whom the duty devolves, reciting the reasons upon which each of its conclusions are predicated. This decision is then promulgated. In arriving at its conclusion, the Commission has the right to require affidavits from the interested parties and witnesses, and may demand the produc-

tion of documentary evidence. A failure to submit the same or to furnish testimony under oath within a specified time may result in adverse decision and such penalty as the Commission deems adequate. If a player is suspended by a club or league, he has the right to appeal to the Commission, which has authority to reinstate him. Controversies under the jurisdiction of the Commission have indefinite scope, and include any violation of a contract by a player or owner, the execution of a contract in a form other than that prescribed by the Commission, controversies regarding drafts, waivers, assignments of contracts, suspensions and penalties, optional agreements, reserve clause, violations in salary or numerical limit, construction of terms such as "for the season" and "free agents," all arrangements with reference to the World's Series, in fact, everything pertaining to it but the actual playing, even to the extent of fixing the price for admission, all arrangements for intercity games such as those played between the two Major League clubs in Chicago and St. Louis, in fact, it has jurisdiction over the players even after the season is over.

On the 6th day of January, 1914, the National Agreement leagues entered into an agreement with the Players Fraternity in which certain modifications and interpretations were made of the National Agreement, the same being for the benefit of the players, all of which again comes under the jurisdiction of the National Commission.

Some Important Legal Discussions on the Reserve Clause.

One of the most important cases which found its way into the courts was that of the American League Baseball Club v. Chase, 86 Misc. 441, 149 N. Y. Supp. 6, decided July 21, 1914, in which a great many of the provisions of the National Agreement were reviewed.

Chase signed the contract prescribed by the National Commission for the American League, and on June 15, 1914, gave notice in writing of his intention to cancel the contract made March 26, 1914, and on June 20, 1914, contracted to play with the Buffalo club of the Federal League. The case was heard on a motion to dissolve a temporary injunction. The court first held that equity had jurisdiction by injunction on the ground that the services were unique and unusual. It was further held that the contract was unenforceable for want of mutuality in so far as it bound the player to renew, notwithstanding it provided that $1,500 of the player's salary was a consideration for an option reserved to the employing club to contract for the exclusive right to the player's services for the succeeding year, and required him to renew his contract or abandon his vocation, and prohibited him from obtaining employment without consent in any other club, and further provided that it could terminate the contract on ten days' notice to the player, this was further held that the National Agreement and the rules of the National Commission did not come within the Sherman Anti-Trust Law even though it constituted a monopoly of baseball as a business in the United States, but that it did contravene the common law, invading the right to labor and contract as a property right, and a court of equity would not enforce the claim of a club to exclusive right to the services of a player with whom it had contracted under his contract reservation in accordance with such rules and regulations.

On June 30th, 1914, the circuit court of appeals for the sixth circuit in the case of Weeghman v. Killifer, 131 C. C. A. 558, 215 Fed. 289, L.R.A.1915A, 820, again passed on the reserve clause.

Killifer contracted in April, 1913, with the Philadelphia National League club for his services for that year, the contract containing a reservation of his services for 1914. The contract provided that 25 per cent of his salary was a consideration for his reservation, the contract being subject to termination by the Philadelphia club on ten day's written notice.

After the close of the 1913 season, Philadelphia notified Killifer it desired his services for the next year, and would pay him an increased salary. However, on the 8th day of January, 1914, he entered into a contract for his services with the Chicago Federal League club for the

next three seasons, they having knowledge of his previous contract and its provisions. On January 20, 1914, he executed another contract with the Philadelphia club for the same three seasons, whereupon the Chicago club sought to restrain him from playing with the Philadelphia club. It was decided that, while the reserve clause could not be enforced for want of mutuality, uncertainty, and indefiniteness with respect to salary and terms and conditions, that it was merely a contract to enter into a contract if the parties could agree, and while it lacks mutuality by reason of the right to determine it upon ten days' notice, yet, the Chicago club did not come into court with clean hands, as it did not give the Philadelphia club an opportunity to ascertain whether it could contract with the player.

In the Marsans Case, 216 Fed. 269, Judge Sanborn held that the contract employing Marsans for specified periods at a fixed compensation on condition of the right of discharge on ten days' notice which was accepted in writing, made a valid and binding contract, and the negative covenant contained therein not to render such service to another was enforceable by injunction.

It would serve no useful purpose to review all the decisions on various phases of baseball contracts; those mentioned show the view taken of them by the courts. While there may be some question as to enforcement of the reserve clause incorporated in these contracts, yet this clause is the very life of the preservation of the game.

Thousands of dollars and years of care and attention are expended by a club in an endeavor to convert a recruit into a finished player. This would have to be abandoned if, after this expense, the services of the player could not be reserved by that club. This could not be remedied by executing a long-time contract even if the salary could be agreed on; for long-time contracts for obvious reasons usually work both to the detriment of the player as well as the owner. Neither is it possible within the scope of this paper to comment on the intricacies of the plan of drafting players, nor all of the many other rules and regulations governing the orderly and systematic method by which this great American pastime is regulated. If it is a fact that it is a pleasure and recreation to millions of American fans; if it is a fact that the honesty and integrity of the game has never been called into question; if it is a fact that millions of dollars are invested by club owners and that leagues are scattered throughout the length and breadth of the United States, —this is not due to any accident. It must have come through a formal plan, for it has been said that accident never has construction, but destruction, for its purpose. The thousands of ball players earning from mediocre to princely salaries, and the hundreds of club owners with fortunes invested in the game, are held together in a systematic and orderly manner, by the wisdom of the National agreement and the rules of the National Commission as they are and have been administered by Ban B. Johnson, John K. Tener, and August Herrmann, in wisdom and in strength, in justice and in equity.

All hail the National Commission to which is due a debt of gratitude by the baseball loving fans of this country which will be difficult to repay.

Chas. Jacobson

The Four Corners of the Statute

BY THANE MILLER JONES

Judge of Probate, Woodstock, N. B.

N POINT of fact, then," suggested Attorney Edward Palmer with a rueful grimace, "the case seems to furnish a legal conundrum,—When is a mother not a mother?" Judge Enright threw himself back impatiently in his well-worn swivel chair and, removing his eye-glasses, employed them in a familiar forensic gesture.

"The whole monstrous anomaly, Mr. Palmer, is entirely due to the peculiar state of the law on the point in the Canadian province of New Brunswick. And I'm not responsible for that."

He replaced his glasses, frowned impersonally at a mass of littered manuscript on his desk, and added:

"The late Dr. Spaulding was a lifelong personal friend of mine, and I must admit that when his daughter Mary—Mrs. Andrews—insists that I can do something to free her boy the appeal touches me—deeply. But I have advised her to go back to her late husband's home in Fredericton, New Brunswick, and retain competent counsel there. I am naturally unfamiliar with these foreign laws—"

"But the lady cannot be brought to see that," smiled Palmer.

"W-e-ll, no," grudged the judge, "though I explained to her that since my retirement from the bench I have sought leisure for my exacting literary labors—which I have been assured are of no inconsiderable importance—"

"And she still insists?" queried Palmer, with a humorous glance at the littered desk.

The judge fondly straightened the mass of foolscap sheets and nodded.

" 'Make them give me back my boy' is what she dins into my ears," complained the old jurist. "And I am free to admit that the strange situation cries for action. Her husband is dead, and of his act I shall say nothing—he acted as he thought best, no doubt—but as for this testamentary guardian, I—I consider him an unfeeling scoundrel!"

"But," demurred Palmer, "I don't quite agree—well—let me see your record of the facts, please. There are some details that—perhaps—"

The judge polished his glasses vigorously and glared over them at Palmer, then, with trembling fingers, extracted from a dusty pigeonhole a typed sheet.

Palmer lit a cigarette and slowly read aloud, smiling slightly from time to time at the judge's characteristic phrases:

" 'November 20th: Mrs. Mary Andrews. Daughter of late Thomas Spaulding of Hamstead in this state. In 1898 she married Professor G. F. Andrews, a lecturer on chemistry in St. Anne's University, Fredericton, New Brunswick, Canada. One child, George, born the following year. Born in Canada of Canadian father, no doubt of his British nationality. When the war broke out in August, 1914, the lad, then a veteran of fifteen years in the ranks of the Canadian Boy Scouts, was eager to enlist in the Canadian Overseas Expeditionary Force. Of course he was then too young, but the mother knew that, with the consent of the parents, the authorities were accepting stalwart youths little over sixteen years of age. The father, himself a soldier—a volunteer from Canada in the Boer War—warmly approved the boy's enthusiasm, but Mrs. Andrews vehemently protested. Her boy was not to be sacrificed in European brawls. He was as much American as Canadian,—and she was his mother. As the months went by, this first quarrel of their married life gradually resulted in a semi-separation. In the summer of 1915 the boy had grown into a big, strapping youth of sixteen, whom the colonel of

the local battalion would gladly have accepted with the necessary consent of the parents. But there was this matrimonial deadlock. Andrew's ill health rendered the situation even more distressing. In the winter of 1916 he died. After her first grief, augmented by the fresh memory of their bitter quarrel, the widow took some comfort in the knowledge that now her boy was her very own and under her undisputed control. She made preparations to bring him back with her to this, her native state, and thus forever rid herself from this war terror that would draw her only child into its fatal clutch.' "

Palmer lifted his eyes from the manuscript and commented: "She evidently impressed her view strongly upon you, Judge."

The judge rose, strode abruptly to one of the old-fashioned bookcases, pulled out a volume, replaced it without opening it, and replied in a low voice, without turning his head:

"I lost my only son in Cuba."

"I didn't know that," commiserated Palmer. He glanced at the thin, stoop-shouldered figure of the judge, then resumed his reading:

" 'It was then that Colonel Good, an old friend of the late Mr. Andrews, quietly informed the widow that the boy was absolutely under his legal control, that she, the mother, had no voice in the boy's conduct whatever! To substantiate his incredible claim he produced a will of her late husband, appointing him, Good, testamentary guardian of the boy until he attained his majority, executed under the authority of the old English statute of 12 Car. II. chap. 24, § 8, and still in force, as part of the common law, in New Brunswick, in all its original disregard of the mother's rights.[1] The conditions of a military and quasi feudal nature that lay back of the statute when originally passed no longer exist,—unless, indeed, this very case furnishes a belated and curious example,—and in nearly all of the states as well as in England itself, the severity of the statute has been modified so as to recognize the widow's natural rights.

" 'The amazed widow consulted local attorneys there, who reluctantly confirmed the colonel's monstrous claim. She appealed to the colonel himself, who solemnly reminded her of the intensity of her late husband's convictions, and that, though he was willing to relax his strict rights as guardian in all else that concerned the boy, his plain duty was to encourage the son should he decide to enlist, and to give the necessary consent as guardian under the regulations.' "[2]

Palmer paused and glanced at the judge. "Well, the colonel was being faithful to his trust."

"An iron-hearted military despot," thundered the judge.

Palmer shrugged his shoulder and continued reading:

" 'Mrs. Andrews sought out the colonel of the local battalion, and served formal notice upon him that, as mother, she would withhold her consent, whereupon that officer politely informed her that he had been advised by the government lawyers that Colonel Good, the guardian, had, in law, the custody and control of the boy, and that he was the sole person to be consulted when the boy's enlistment application was sent in. Mrs. Andrews found herself robbed, by the blind virulence of an outworn statute, of her own flesh and blood. I advised her that I would consider the matter and communicate with her New Brunswick lawyers.' "

[1] Section 8 of the Statute 12, Car. II. chap. 24, is as follows: . . . It shall be lawful for the father of such childe, by his last will and testament in writeing, in the presence of two or more credible witnesses, . . . to dispose of the custody and tuition of such childe for and dureing such time as he . . . shall remaine under the age of twenty-one years . . . to any person . . . and that such disposition of the custody of such childe shall be good and effectual against all and every person . . . claiming such childe as guardian in socage or otherwise."

As to state of the law in American jurisdictions, see 13 L.R.A.(N.S.) 290; also see 45 L.R.A.(N.S.) 446.

[2] Under the orders and regulations as to enlistment in the Canadian Overseas Expeditionary Forces of August 13, 1915, men between the ages of 18 and 45 were eligible, and youths physically fit of over sixteen were often accepted but ". . . no boy under 18 years of age will be enlisted without the consent of his parents or guardians."

Palmer finished reading and tossed the sheet on the judge's desk. "I take it," he suggested, "that you feel—adverse to confronting the colonel on foreign soil. They might intern you for—er—interfering with enlisting—"

"No!" thundered the judge springing to his feet, "I will face him and I will denounce him for the scoundrel that he is!"

"Bravo!" laughed Palmer, smiling with affectionate respect into the old judge's flushed face. "And perhaps you can dig out, down there in the law library, some kindred anachronism to counteract this statute—er—in such case made and provided."

Two days later, Judge Enright and Mrs. Andrews arrived in Fredericton, and at once sought out the local law firm of Weldon, McPhail & Harmon.

"It would puzzle a Philadelphia lawyer—as the saying is—to find a favorable solution of your difficulty," explained Max Harmon. "I have gone over the proposition from every angle and I always run up dead against this statute of Car. II. We have simplified our practise—notably—as compared with most of the states, but we cling to the old laws. This statute has probably never pinched before in this province so severely, and this case may lead to its amendment, bringing it in conformity with the modern tendency to regard more fully the rights of woman. But of course an amending statute would have no retroactive operation and—"

"And Mrs. Andrews can't have her boy," finished the judge grimly. Then added: "Have you a copy of the will?"

"Oh, yes," assured Harmon, selecting a typed sheet from a bundle on his desk, "and Colonel Good has given us every opportunity to test it. He even suggested that we interview the witnesses, which we did. In this province a will merely appointing a testamentary guardian need not be probated in order to give the guardian authority to act, although of course it must be proved as a justification should the question of the custody of the child arise, as on habeas corpus—which I presume, if you decide to test the matter in the court, is the procedure you will adopt."

"I think so," answered the judge, studying the brief document. "Who are these two witnesses,—James S. Miller and Theodore H. Andrews?"

"Miller is a merchant here,—a very decent sort of chap, called in when the will was ready to sign,—and Andrews is a cousin of the late Mr. Andrews. He is a sort of student at law—that kind that will always remain a student—if you know just what I mean. Hasn't gumption enough to complete his course. Has picked up a lot of scattered law, though. But he's a poet by choice—writes war songs nowadays. Used to write erotic and muddy verses in which he had Browning beaten in everything except the underlying sense that some folks are quite sure they can find in Browning. This Theodore admits that he was the one who pointed out to his cousin this power of testamentary appointment under our laws, and he brags that he has done a service to his country in preventing the mother from making a slacker of the boy."

"He's a loose companion for Georgie," complained Mrs. Andrews. "I used to dislike the boy's father and Theodore laughing over what they called the superstitions of the age. I remember how annoyed I was when my husband enjoyed Theodore's perversion of Pope's couplet. He twisted it to: 'An honest God's the noblest work of man.' And that's the kind of a man that Colonel Good lets Georgie chum with around the barracks. I think it's shameful—"

"You might call Colonel Good's attention to it," suggested Harmon, "but I don't see what else can be done."

The judge sighed, pursed his thin lips, and, promising a renewal of the discussion, passed out to the street in a thoughtful mood.

A long line of fresh-faced boys in khaki swung around the corner into King street. Four buglers—the nucleus of a battalion band—shrilled out a monotonous, meager-noted, yet somehow compelling, appeal that stirred old memories in the judge's blood. He glanced about him. People on the sidewalk moved quietly on, but their eyes glinted with a somber fire. His alert glance noted a young giant of a youth loitering, cigar-

ette in listless mouth, watching the recruits. A sort of indignation fired his blood. "I suppose," he sneered, indicating the loitering boy to Mrs. Andrews, "that that young worthy is one of the slackers. I—"

Mrs. Andrews gave a little cry. "Why, it's Georgie!" she exclaimed, moving quickly over to the boy. "Georgie!"

The judge took the boy's hand and looked earnestly into his face. Then he sighed, hesitated, and excused: "I've some law to look into, and, if you'll excuse me till lunch time, I think I'll—"

Mrs. Andrews nodded absently, her mother eyes fixed on the boy's flushed face.

A writ of habeas corpus was taken out returnable the following Monday before Mr. Justice Raymond at chambers.

In the interim Judge Enright took a flying trip to Ottawa, where some of his fiery utterances are still quoted with relish. To the widow's tearful inquiries, upon his return, he repeated these utterances—expurgated. He also instituted telegraphic inquiries after consulting a newspaper directory, and received some bulky packages by express.

On Monday morning at 11 he met Harmon in the courthouse corridor. "Well," said Harmon, "it's best to make a fight—if only to satisfy Mrs. Andrews that she can't win. She has faith though; she says that Judge Raymond has such kind eyes!"

The judge smiled absently, then, as they found seats along the long attorneys' table, he whispered: "Who is that large, florid man sitting near the stenographer?"

"Colonel Good," replied Harmon behind a careful hand.

"Hurr!" snorted the judge.

Judge Raymond padded up the little steps to his seat, beamed mildly upon the bar, who bowed gravely in return, drew a bundle of papers toward him, and began:

"In the matter of George Andrews, an infant. You appear, I think, Mr. Harmon, in support of the application?"

"Yes, your Honor, and with me—by the courtesy of the court, is Judge Enright, an American attorney who—er—"

"Why, certainly," hastened Judge Raymond, "Judge Enright is well known in New Brunswick as the author of many valuable legal articles as well as Enright on Estoppel, I believe?"

Judge Enright bowed gravely.

"I appear for Howard Z. Good, the testamentary guardian, your Honor," announced a small, dark man with a surprisingly large mustache.

"Yes, Mr. Twining."

Mr. Harmon closed his case in less than half an hour.

Mr. Twining arose. "May it please your Honor, we claim the custody of this child, an infant of some seventeen years, under a will executed on the 16th day of February, 1916, under the authority of the statute 12 Car. II. chap. 24, § 8." He read the section with gusto, and glanced around the crowded court room, noting the interest that was being taken in his address. He was of a class of lawyers who habitually "play to the gallery;" and he felt that this case would help him in his next election. Nothing like patriotic zeal to get the votes! And he felt that he was in the role of a champion of Canadian youth ardent to enlist, and fighting manfully against a semi-seditious attempt to prevent enlistment. Judge Enright and Mrs. Andrews were unquestionably pro-German. Really something ought to be done about it. He went on:

"That this statute is in force in New Brunswick, there can be no doubt. I cite Re Taylor, 1 N. B. Eq. p. 461 and Re Davis, 40 N. B. p. 23. A will merely appointing a testamentary guardian, as in this case, need not be proved in the probate court; Gilliat v. Gilliat, 3 Phillim. Eccl. Rep. p. 222. And, your Honor, as to the absolute custody of the infant by the guardian to the exclusion of the mother, I cite Re Andrews, L. R. 8 Q. B. 153, 28 L. T. N. S. 353, 21 Week. Rep. 480, cited with approval in the Davis Case. I propose therefore, your Honor, to establish the will as a defense to this application." He paused, squinted at the attentive audience, and ventured: "I presume that my case is not strengthened, as a matter of law, by the fact that I can establish that this whole controversy arises over an attempt to interfere with the enlistment of a youth eager to fight

for his country's honor on the battlefields of France and—"

"No, it isn't," agreed Judge Raymond dryly.

Twining blinked and sat down. But he had, he felt certain, made votes! Then a moment later called the first subscribing witness, James S. Miller.

At the conclusion of a severe cross-examination of the witness, Harmon ruefully whispered to Judge Enright: "The beginning of the end, I'm afraid."

The old jurist polished his eye glasses nervously and glanced toward Mrs. Andrews, who sat gazing tearfully at her son. The young man's flushed face was set in strained lines. He winced as his father's cousin, Theodore Andrews, winked encouragingly over his mother's shoulder. Judge Enright set his jaw.

Twining arose. "I will call the other subscribing witness, Theodore H. Andrews."

Andrews rose briskly, tossed a mop of hair back from his poetic brow, and took his place in the witness stand.

The aged clerk held out the Bible for the oath.

"One moment, please," directed Judge Enright quickly.

The clerk looked puzzled. "Witness must be sworn first," he muttered hesitatingly. These funny Yankee ideas! He tittered.

Judge Enright shot a question at the grinning war poet.

"Is your full name Theodore Hilliard Andrews?"

"Yes—sir."

"Then you are the Theodore Hilliard Andrews,—the author of those striking articles in the Freethought Quarterly on —er—theological subjects?"

Andrews flushed in surprised pleasure. The soldier boys in the rear seats were listening with open mouths. This would show the dull wits of his town that he was well known in the outside world. He smirked.

"Oh, yes; those little articles—"

"From a reading of those little articles I infer that you have—er—independent ideas on religious matters."

"Well—yes."

"And that," continued Judge Enright, "you give us hope that 'the fires of hell will ere long be quenched by the fierce light of modern thought.'"

"I object," stormed Mr. Twining, "This is very, very irregular. I fail to see—"

"Voir dire," snapped Judge Enright, flinging the words bomblike into the little lawyer's face.

"But, your Honor—"

"Judge Enright is in order," announced the court.

"Then you don't personally believe in hell?" persisted Judge Enright.

"No, nor does any intelligent man in this age," replied Andrews hotly.

"But you do believe in the more comfortable doctrine of heaven?" insinuated the judge.

"Why should I? It's all of a piece. Outworn superstitions."

"I note that you say, in an article here," continued the judge, glancing at the magazine in his hand, "that 'what the priest-ridden people call "god" is yet in process of definition.' Is that lower-case g yours?"

"I wanted to emphasize—"

"You succeeded! Now, tell me, do you believe in God?"

"What you call God is in everything, —stones, trees, clouds,—er—"

"And monkeys?"

"Yes—nowhere in particular."

"And certainly not in heaven, for you don't believe in heaven?"

"No, I don't. But I don't see what all this matters. I'm here to give evidence in this case."

"Just one more question and then you may—perhaps. Do you believe in future rewards and punishments dependent on your conduct in this life?"

"No!"

The old jurist turned to the court. "May it please your Honor, we have here a shining example of arrested spiritual development of a superman, according to the viewpoint. At all events a person who, under your laws, is, I submit, not a competent witness. I ask that he be rejected as a witness."

Andrews flashed a startled look at Twining, who whispered something in the ear of Colonel Good, then frowning penciled a hasty note.

"I would cite, your Honor," went on

Judge Enright, "the New Brunswick case of Bell v. Bell, 34 N. B. 615. There a witness, upon the *voir dire,* was rejected where he did not believe in a state of future rewards and punishments, though he reluctantly admitted a belief in God. In that case, the English authorities of Omichund v. Barker,[3] Rex v. White,[4] and Maden v. Catanach[5] are cited with approval. The law is clear. In fact I find the law on this point to be in that state of unmodified severity in which we find the old statute of Car. II." Judge Enright paused and glanced whimsically at the scowling Twining. Then continued, with a smile: "The only hint I can find of any tendency toward a modification of the strictness of the rule may be gleaned from the very interesting judgment of Mr. Justice Barker—afterward Sir Frederic Barker—Farrell v. Portland Rolling Mills Co. 3 N. B. Eq. page 534, where a witness, Perkins, was interrogated upon the *voir dire,* and his answers were such that the learned judge permitted him to be sworn. In his judgment in the case, Mr. Justice Barker says, —I am reading from page 534,—'Mr. Perkins does not seem to have answered the inquiry as to his belief in the existence of hell. But as he later on in his examination expressed a very positive opinion that the gentleman whom he considered responsible for this catechizing would certainly go there, I feel at liberty to assume that he believes in its existence.'"

Mr. Twining arose and labored through a losing argument.

"No. I must reject the witness," announced Judge Raymond.

"Then," suggested Twining, "I will call other witnesses to prove the execution of the will. Dr. White was present—"

"It would be quite useless," argued Judge Enright. "The act says that the will must be executed in the presence of two credible witnesses, that is, witnesses who would be, at the time of the execution of the will, such men as would be competent witnesses on occasions when the testimony of witnesses is ordinarily received."

"True," agreed the court.[6]

"Then—then I can't establish this will at all," gasped Twining, aghast.

"Unless you have some other interesting and moldy statute to rely upon," suggested Judge Enright.

Twining flung a sour look at the crestfallen Andrews.

"Writ sustained," announced the court. "Usual order to be drawn." He reached for another bundle of papers. "In the Matter of the Winding-up Act. . . ."

Once out of the stuffy court room into the broad corridor, Mrs. Andrews pressed her son's arm fondly. "You're free, Georgie, now to go back with me out of this terrible country." She had been given back her boy! No one could take him from her.

A smartly dressed lieutenant of the 104th brushed past them.

"Hey! Andrews—Theo! Have you seen the new orders and regulations? Boys under 18 need not now have the consent of parent or guardian to enlist! Blamed good thing, eh? We can get over 300 out of this county!"

"What's that he's saying?" gasped Mrs. Andrews, clutching the judge's arm.

But the young giant whom she had fought so hard to hold was already half way across the echoing hall.

Swiftly he scanned the typed sheet the lieutenant thrust out. As he read, a gleam of exultation quivered in his eager young face. Visions, he saw, of instinctive, bred-in-the-bone patriotism free now to justify itself, a glorious opportunity for the vicarious triumph of his dead father's ideals; these found no audible voice—his brave, northern restraint veiled his emotion, but—a boy's thoughts are long, long thoughts all the world over! German youth pouring into the trenches feel the same exultation. And they are both right!

Then he came quietly back to his mother. In her hopeless face he read that she knew that he was free. Yet something tightened painfully in his

[3] 1 Willes, Rep. 538, 125 Eng. Reprint, 1310, 1 Atk. 21, 11 Eng. Rul. Cas. 126.

[4] Leach C. L. 430.

[5] 7 Hurlst. & N. 360, 31 L. J. Exch. N. S. 118, 5 L. T. N. S. 288, 10 Week. Rep. 112.

[6] See 30 Am. & Eng. Enc. Law, 2d ed. 604. Also see 35 L.R.A.(N.S.) 688.

throat, and he cried: "Mother! Don't! I'm going back with you."

Bravery is physical, but courage is of the soul. The decision cost the boy much, but it was the price that purchased him his manhood.

The little woman clutched his arm. "You will—you will go home with me?"

"I am going home with you—unless—you wish—otherwise."

They had reached the street. A long column of silent soldiers moved past. The quaint, tuneless, bugle band shrilled out its wrenching, imperious appeal. She saw, in her boy's face, her dead husband's soul. And it would not be denied.

She shivered. "Go—go with them, George. And—afterward—come back."

Judge Enright wheeled about and looked at the woman with stern, questioning eyes. Then he took her hand and raised it to his lips. People paused and gawked at the strange tableau with silly surprise.

"My dear lady," he whispered, as he thought of an unmarked grave in Cuba, "you are risking his life, but you have given him his soul."

Hane McJones

Blackstone and Bentham

The typical achievement of the eighteenth century is Blackstone's Commentaries, which reduced to a form of singular literary excellence the matter of the authorities received as classical, and for the time being accepted as sufficient. Blackstone caught and expressed the spirit of his time with consummate skill, but he caught it only just in time. Hardly was his ink dry when Bentham sounded a blast that rudely disturbed the supposed finality of the common law, and (what was even a greater matter) the Independence of the United States insured the free and ample development of English legal ideas in directions and for purposes as yet unknown. With the nineteenth century we are started in a wide and ever-expanding field of new adventures. —Sir Frederick Pollock.

To Blackstone the field of English law seemed a paradise filled with everything to delight the eye and the mind; to Bentham it was a howling wilderness, full of all sorts of unclean birds and ravening beasts. In sober fact, it was neither, but a region where good land was plentiful in the midst of fen and marsh, rock and mountain, and where thought, care, and labor were required to destroy the wild beasts, to subdue nature, to extirpate weeds and brambles, and to make the soil bear blossom, fruit, and grain.

One lesson which I wish to inculcate is the excellence of the Commentaries of Blackstone, and their value especially to the students, the lawyers, and the jurists of this country. He did a great work; he did it well. Its merits are the best known to the careful student who appreciates the confused and dispersed condition of statutes and decisions which it reduced to order and constructed into one of the most beautiful, noble, and symmetrical outlines of a complex system ever produced by the mind of man.—John F. Dillon, Laws and Jurisprudence of England and America.

Editorial Comment

To mould a mighty state's decrees.—Tennyson.

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Congressional Legislative Reference Bureau

THE librarian of Congress, Mr. Herbert Putnam, in his annual report for 1914, referred to the many requests made by committees and by individual Senators and Representatives for lists of books and articles upon a given topic, and intimated that in meeting them the library often reached beyond the functions of a library to those of a legislative reference bureau.

The appeals were often not for a book on a given subject, but for a statement either of the facts, or of the law, or maybe a statement of the merits. "The latter," observed Mr. Putnam, "is not a safe function even for a legislative reference bureau; it is rather the province of an investigating commission. A statement of the facts which limits itself to a summary from available printed sources, with the authority duly identified, is within the usual province of such a bureau; and a statement of the law is its minimum and primary duty. For the legislator proposing to draft or to discuss a bill must have before him not merely the laws already enacted within the jurisdiction for which he is legislating, but as well the laws of other jurisdictions, domestic and foreign."

To make the vast resources of the library available in this regard, Congress made an appropriation for the employment of the necessary staff. The annual report for 1915 discloses that much preliminary work was done in anticipation of the demand for data on subjects of pending legislation or that which was clearly in prospect.

With the session the particular demands began to come in. Practically all were pertinent to questions before or likely to come before Congress. They included requests for digests or compilations of Federal or state statute or constitutional law on various subjects; for comparative studies, compilations, abstracts, or translations of foreign laws or decrees; for translations and compilations on certain subjects in international law, etc. Questions arising out of the war were prominent; such as, exportation of munitions, contraband, suppression of the liquor traffic, and neutrality.

The omission from the service as legalized of any provision for bill drafting did not prevent some requests for aid in this regard. This assistance was rendered informally and merely as a personal suggestion from some member of the staff. The representative determined the contents of his bill and drafted it as seemed best to him.

The legislative reference branch of the library service has fully justified itself. It has performed much valuable work which will necessarily be developed and extended in time. Much credit is due Mr. Putnam for the organization and efficiency of the service. It will prove an invaluable aid to our national legislators.

Equity and the Statute of Frauds

EQUITY has never been on friendly terms with the Statute of Frauds. The statute stands directly in the way of the absolute power to which courts of equity have felt themselves entitled as of Divine right. Equity has always been impatient of restraint, whether coming from legislatures or rules established by previous chancellors. It has felt itself able to settle cases "on the merits." While the beneficence of settling cases on the merits may be admitted as a very nice theory, when the "merits" are analyzed and discovered to be the whim of the individual who happens to be the chancellor, some of the halo begins to disappear, and the advantage of some settled rules of procedure becomes manifest.

This unwillingness to be bound by settled rules is at the basis of the attitude of equity toward the Statute of Frauds In fact equity is defined by Grotius as "the correction that wherein the law (by reason of its universality) is deficient." (De Equitate. 1 Bl. Com. 61.) Considering the character of equity, it is not strange, therefore, that any hard and fast rule such as was established by the Statute of Frauds should meet with disfavor. In ingrafting exceptions upon the statute, such as the doctrine of part performance and others, equity gave the exception a kind of respectable excuse in setting forth the equities very strongly in favor of the party against whom the statute was invoked. But in case of the reformation of contracts, equity no longer relies upon any equities in favor of the party against whom the statute is invoked, but boldly announces that the Statute of Frauds does not interfere in any way with the power of equity to reform writings on the ground of mistake, accident, or fraud. Equity offers no reason for this, but simply announces the fact. It is desired in the article to point out some of the reasons against such a theory especially where the reformation consists in broadening the writing or making it applicable to subject matter not contained therein, and those in favor of the contrary theory adopted by some courts; for not all courts of equity have thus overruled the Statute of Frauds. The courts of Connecticut, Idaho, Maine, Massachusetts, New Jersey, North Carolina, Pennsylvania, Rhode Island, and Wisconsin have recognized that the Statute of Frauds prevents the charging of one upon an oral contract for the sale of land the same whether the relief is sought by way of reformation of a written contract, or by way of charging upon an original oral contract. Where changes of circumstances have taken place so as to give rise to equities, another question is presented. This argument is directed at the theory that for mistake alone equity may reform a contract notwithstanding the Statute of Frauds.

The most common class of contracts within the Statute of Frauds which have been the subject of reformation have been those relating to land. In accord with the conclusion that the Statute of Frauds does not interfere with the jurisdiction of equity to reform a contract for mistake, equity has granted the reformation, and inserted land in the contract upon an allegation that it was omitted from the written contract by mistake. If A orally agrees to sell B 10 acres of land, the Statute of Frauds prevents the enforcement of the agreement. But if A orally agrees to sell B his farm, and subsequently deeds him all but 10 acres, the Statute of Frauds is held not to prevent relief to B by reforming the deed and including therein the 10 acres, although A alleges that he did not include the 10 acres in the sale. In other words, in case of the sale of the 10 acres, A may admit that he orally agreed to sell the land, but simply pleaded the Statute of Frauds, and the oral agreement cannot be enforced against him. While in the other case he may deny that he ever orally agreed to sell the land, and yet have the contract en-

forced against him, if B is able to convince the court of the truth of his allegations. Now, if courts were infallible and could infallibly determine what the agreement between A and B was as to the 10 acres, there would be more reason in support of the theory. But courts are not infallible; no sane man claims infallibility in anything. The case must rest upon the evidence of the oral agreement. If B is a better witness, and puts up a stronger case, and succeeds in convincing the court, he obtains the 10 acres, and this without any additional compensation. Suppose, therefore, A's allegation that the 10 acres was not included in the sale is the truth (and unless infallibility is claimed for the court, that may be the case), A is deprived of his land without compensation. But assume that the oral sale did include the 10 acres, the case as to that still rests upon parol evidence and the use of such evidence to charge one upon a contract relating to land has been forbidden by the Statute of Frauds, and no court is entitled to disregard it, not even a court of equity.

But someone says, if the oral agreement did include the 10 acres, B will be deprived of this amount of land. The answer to this is that B is entitled to a rescission of the contract and a recovery of the money paid. So that the only thing of which the enforcement of the Statute of Frauds deprives B is the benefit of his bargain. It is much better that contracting parties should be deprived of the benefit of their bargains if they do not comply with statutory requirements, than that the Statute of Frauds should be disregarded.

One court (Davenport v. Sovil, 6 Ohio St. 459) which adheres to the rule that equity has jurisdiction to correct a writing in case of mistake notwithstanding the Statute of Frauds expresses an opinion that it is "difficult or impossible to reconcile this doctrine with the letter of the Statute" of Frauds, but suggests, if the rule is to be changed, it be by statutory enactment. If a court refuses to follow the rule of an existing statute so clear that the court understands its rule is a violation of the statutory rule, it is puzzling to understand how the situation would be remedied by another statutory enactment, unless on the theory that it would furnish an opportunity for the court to mend its ways, a judicial New Year, as it were, on which the court could indulge in New Year resolutions.

Other courts have expressed unbounded admiration for the rule. We are told that by this rule the statute is "uplifted" (Noel v. Gill, 84 Ky. 241, 1 S. W. 428). Another court in this jurisdiction tells us that "the developing science of the law and its ever-waxing love of justice increasing the omnipotence of the chancellor for equitable purposes soon settled that this statute in no wise modified" the power of courts of equity in this regard (Worley v. Tuggle, 4 Bush. 168). Between thus uplifting the statute and increasing the omnipotence of the chancellor, a miracle is wrought in this jurisdiction by reforming a writing referring to a deed but containing no description of land, and specifically enforcing it as reformed, although the writing as it was made by the parties was admittedly so defective as not to be specifically enforceable (McMee v. Henry, 163 Ky. 729, 174 S. W. 746).

In a sense the reformation of a written contract by making it include land that is alleged to have been omitted therefrom, an allegation which is denied by the defendant, involves more than proving an oral contract in the first instance; for in addition to proving the oral contract it is necessary to prove that the written contract does not represent the true agreement of the party; in other words, it is necessary to impeach the written contract in addition to proving the oral one. It may be admitted that the impeachment of the written contract is not within the Statute of Frauds, but it is difficult to understand the reasoning of the courts of equity, that proving of the oral contract is not.

There is no reason for such a direct violation of the Statute of Frauds by reforming a writing in case of mistake alone in failing to reduce the true argument to writing.—Willis A. Estrich.

Among the New Decisions

Justice is the rightful sovereign of the world.—Pindar.

Action — injury to realty — transfer of title — effect. In an action for damages to land by reason of the construction of a railway embankment, where the pleadings and evidence show conclusively that the permanent character of the embankment and its continuance as originally constructed necessarily produced the injury to the freehold and caused the entire depreciation in the value thereof at the time of the construction, and that such injury had wholly occurred prior to the time when plaintiff acquired such land, it is held, in St. Louis & S. F. R. Co. v. Stephenson, 43 Okla. 676, 144 Pac. 387, L.R.A.1916E, 966, that she took it in its then known condition, and the issuance of a patent conveying the land did not confer upon her a right of action for the recovery of damages for injuries thereto occurring prior to her acquisition of title. It is further held that a loss of rental value does not constitute an injury for which damages may be recovered where, as in this case, there was permanent injury to the land itself.

This decision is based upon an apparent exception to the rule that the time of the physical injury is the time when the right of action arises. The court regarded the depreciation in the market value of the property as the real injury, and thus arrived at the conclusion that all the injury had occurred before plaintiff acquired title.

Action — permanent injury to real estate — right of subsequent tenant. Where a railroad company builds a permanent culvert across a stream, which is too small to carry the water naturally flowing in the stream, and the fact that injury will result to upper riparian land is at once apparent, the expense of which can be reasonably determined, so that all damages must be recovered in one action, a tenant who subsequently leases the property is held not entitled to maintain an action agains the railroad company for injury inflicted upon him for a subsequent overflow of the water, in Chicago, R. I. & P. R. Co. v. Humphreys, 107 Ark. 330, 155 S. W. 127, L.R.A. 1916E, 962.

This decision is typical of a small group of cases that constitute an apparent exception to the well-established rule that no right of action for injuries caused by a nuisance or illegal structure arises until some injury has actually occurred, unless there has been an invasion of the plaintiff's property that amounts to a trespass. The exception is made by a few courts, and it can be justified only upon the ground that the real injury occurs when it becomes obvious that the physical injury is certain to occur. In this view, the cause of action arises when the injury occurs, but the "injury" is not necessarily the physical injury. So, the exception is only apparent, but the decision is not in harmony with the great weight of authority on the question

The court holds, as do others of this group, that where the structure causing the injury is permanent, the future injury obvious, and the future damages susceptible of reasonably accurate calculation, there is a right to but one action.

Assignment — of agency. That one employed as a sales agent by a manufacturer cannot transfer the powers and rights which the contract with his principal conferred upon him personally, to a corporation organized by him, unless his principal consents thereto, is held in the Minnesota case of Barber Agency Co. v. Co-operative Barrel Co. 158 N. W. 38.

No other case has been found in which the contract attempted to be assigned was treated as an agency contract. A similar conclusion, however, has been reached in employment contracts, as appears by the note appended to the foregoing decision in L.R.A.1916F, 88.

Attorney and client — disbarment — aspersion of opposing counsel. An attorney, it is held in the App. D. C. case of Re Reid, annotated in L.R.A.1916F, 394, will be disbarred who, by irrelevant affidavit in the appellate court, falsely and without reasonable cause charges his opponent in the lower court with causing the transfer of the cause from one justice of the court to another for hearing, thereby gaining an unfair advantage and being guilty of unfair practice, and with having colluded with a justice of the court to establish a basis for a claim that there had been a legal adjudication of the question involved therein, when the court was without jurisdiction.

A wanton or malicious accusation of a serious nature by one attorney against another attorney is cause for the former's disbarment whether the aspersion is in a pleading in an action, in the course of a disbarment proceeding, in an attempt to intermeddle between the other attorney and his client, or otherwise. The quotation in Re Reid, from Re Adriaans (1900) 17 App. D. C. 39, clearly shows that such conduct is not to be tolerated. At the same time the courts are often not indisposed to suspend rather than disbar, where the circumstances offer some palliation, if not excuse. The fewness of the cases needs no comment.

Carrier — absence of ticket — right to eject passenger. That a passenger who boards a train in the usual manner without procuring a ticket cannot be ejected after the train starts if he offers to pay a cash fare, although a rule of the company is posted in the depot, requiring passengers to purchase tickets before entering trains, is held in the Tennessee case of Allen v. Chicago R. I. & P. R. Co. 185 S. W. 713, accompanied by supplemental annotation in L.R.A.1916E, 1092.

Carrier — intoxicated passenger — failure to protect — liability. That an interurban electric railway company is not, because of failure to care for him, liable for injury to a passenger, who, although intoxicated when he boarded the car, slept until his destination was reached, and, being then awakened, knew what he was doing, and left the car at a safe place in a public street, but leaned against the car with his foot on the rail, so that it was injured when the car started, is held in the Washington case of Welsh v. Spokane & I. E. R. Co. 157 Pac. 679, L.R.A.1916F, 484.

Carrier — refusal of fare — ejection. A person who insists on riding in a passenger car of a railroad company, who has no ticket and has not paid or offered to pay the regular price of transportation after being given a reasonable opportunity to do so, is held in Wright v. Georgia Southern & F. R. Co. 66 Fla. 510, 63 So. 909, L.R.A.1916E, 1134, to be a trespasser, who may, under the statute, be ejected by the conductor and servants of the company at any usual stopping place, or near any dwelling, as they may elect, using no more force than is reasonably proper and necessary in so doing.

Carrier — collection of too little freight — recovery of balance. The vendor of a horse which is shipped back to him by the vendee, in case he accepts the animal from the carrier, must pay, it is held in the Alabama case of Emerson v. Central of Georgia R. Co. 72 So.

120, L.R.A.1916F, 120, the freight established at the tariff rates for the value placed on the animal by the consignor, and the carrier may, in case it collects too small an amount, maintain an action for the balance of the tariff rate.

Carriers — railroads — collection of excess fares from passengers without tickets. The Louisiana Commission refused to abolish the practice of collecting excess fares from passengers boarding trains at agency stations without tickets, in the case of Railroad Commission v. Railroads, P.U.R.1916E, 293, but the carriers were directed to accept reasonable excuses offered by passengers for failure to get tickets, and it was ordered that excess fares should not be collected from passengers who desire to go beyond the point designated on the ticket.

Constitutional law — impairment of contract — discrimination. The refusal of street and interurban railways to issue transfers to one part of a city although issued to all other parts may be prevented under an anti-discrimination statute, it is held in the Missouri case of Joplin v. Southwest Missouri R. Co. 3 Mo. P. S. C. R. 507, P.U.R. 1916E, 47, although the refusal is in accordance with a contract ordinance.

Contempt — scandalizing court. Where the common law prevails not by inheritance, but by adoption, a publication relating to the action of a court with respect to a cause which has terminated is not held to be contempt, in the Montana case of State ex rel. Metcalf v. District Court, 155 Pac. 278, L.R.A. 1916F, 132, although it tends to cast aspersion upon the character of the judge and thus to scandalize the court.

Contract — impossibility of performance — effect. One is not excused from liability in Runyan v. Culver, 168 Ky. 45, 181 S. W. 640, annotated in L.R.A. 1916F, 3, for failure to perform his contract to manufacture lumber from logs or from substitutes to be procured by him, and pay notes given by strangers to his assignee in bankruptcy for the logs and machinery, for which service he is to retain an interest in the property, by the fact that the logs are destroyed, and the increase in market price of logs makes it impossible for him to comply with his contract, if the contract was not procured by fraud, and contained no provision for the contingency that performance might become impossible.

Contract — refusal of tender — right of purchaser. The duty of a buyer where the seller refuses to accept property tendered in rescission of the contract is considered in Clark v. Wells, 127 Minn. 353, 149 N. W. 547, annotated in L.R.A.1916F, 476, which holds that if the wrongdoer refuses to receive the property when tendered back, the defrauded party may properly do what is necessary to conserve its value, and does not thereby waive his rescission. Where he receives a going business, he may, without waiving his rescission, continue it as a going business during the pendency of the suit to recover what he parted with, if he remain ready at all times to turn over to the wrongdoer both the business in substantially the condition in which he received it, and the profits derived therefrom.

Contract — undue expense in performance — relief. One contracting to take all gravel needed for construction work to an estimated maximum amount from a specified parcel of real estate, at a certain sum per cubic yard, is held relieved from further performance in the California case of Mineral Park Land Co. v. Howard, 156 Pac. 458, L.R.A. 1916F, 1, when he exhausts the amount lying above the water level, so that he cannot take more without prohibitive expense for excavating and drying.

Corporation — purchase of own stock — statutory authority. That statutory authority to a trust company to purchase all kinds of paper, stocks, and other securities, does not apply to its own stock, is held in the Arkansas case of Lefker v. Harner, 186 S. W. 75, which further determines that the purchase by a trust company, for retirement, of so much of its own stock as to reduce

its capital below the amount required by law, is invalid.

The right of a corporation to purchase its own shares of stock is considered in the note accompanying the foregoing decision in L.R.A.1916F, 281.

Damages — nuisance — duration. That damages to the time of trial only may be recovered for the operation of a guano factory by a private individual in such manner as to constitute a nuisance, is held in Webb v. Virginia-Carolina Chemical Co. 170 N. C. 662, 87 S. E. 633, L.R.A.1916E, 971.

The holding in this case appears to be based upon the well-established rule that injuries caused by the manner of operating a legal enterprise give rise to a right to successive actions as each injury occurs, for the reason that the cause of the injury is illegal and abatable; hence, permanent damages are not recoverable. The legal enterprise is not abatable, but the manner of operating is illegal and abatable.

Disorderly house — penalty — liability of conditional vendor. A nonresident executory vendor of real estate without notice, actual or constructive, of the use to which it is put, is held not liable in State ex rel. Kern v. Emerson, 90 Wash. 565, 155 Pac. 579, L.R.A. 1916F, 325, either in person or property for the penalty imposed by a decree abating its use as a house of ill fame by the purchaser.

Electricity — hydroelectric plant — objections — impairment of the scenic beauty. That a hydroelectric power plant will impair the scenic beauty of the river is not controlling in passing upon an application for a certificate of public good, it is held in the Vermont case of Re Thompson, P.U.R.1916E, 232.

Electricity — rates — moving picture theater. The power rate, and not the lighting rate, it is held in the New York case of Vaudeau Amusement Co. v. Edison Electric Illuminating Co. P.U.R. 1916E, 1046, should be applied to alternating current delivered to a motor owned by a company operating a moving picture theater, notwithstanding the motor drives a dynamo generating direct current to be used for light, and the current may be used beyond the usual power period.

Electricity — service — preferences in. The Vermont Commission granted a certificate of public good for an electric utility, in Re Thompson, P.U.R. 1916E, 232, on condition that its articles of incorporation contain a provision to the effect that residents, municipalities, and persons doing business in the state should have a preference in service.

Embezzlement — by bailee — loan of money. One who, having borrowed money to cash pay checks for the purpose of attracting trade, under agreement to return it when the period during which his customers received their pay was over, is held not guilty of embezzlement in State v. Karri, 51 Mont. 157, 149 Pac. 956, in applying the money to other purposes and failing to return it, where, under the statute, the transaction is a loan for exchange and the title to the thing loaned is transferred to the borrower.

The distinction between a bailment and a loan of money is considered in the note appended to the foregoing case in L.R.A. 1916F, 90.

Estoppel — permitting release of mortgage record. Where the assignment of a note carries the mortgage security therewith without placing it on record, it is held in the Tennessee case of Early Co. v. Williams, 186 S. W. 102, L.R.A.1916F, 418, that one to whom notes secured by a mortgage have been assigned, is not estopped, by delivering the mortgage to the payee of the notes as a form for the preparation of a deed of the property, and not discovering that he enters a release of it on the record, to assert priority of his lien over that of one who, in reliance on the recorded release, pays value for titles based on the later deed; at least where the release is executed not by the trustee in the mortgage, but by the unnamed beneficiary, and the one taking the new title makes no inquiry as to the whereabouts of the

notes, although the recitals in the mortgage show that they are negotiable and not due.

Insurance — cancelation — return of premium. A standard insurance policy, it is held in the California case of Mangrum v. Law Union & Rock Ins. Co. 157 Pac. 239, may be canceled by a notice before return of premium, which provides that it may be canceled by the insurer by giving five days' notice, and if so canceled the unearned portion of the premium shall be returned on surrender of the policy.

Return of premium as a condition of cancelation of insurance is considered in the note following this case in L.R.A. 1916F, 440.

Insurance — fidelity bond — liability — unidentified defaulter. Apparently the first decision passing upon the necessity of identifying the defaulter in case of a fidelity bond covering several is the Washington case of American Sav. Bank & T. Co. v. National Surety Co. 157 Pac. 877, L.R.A.1916F, 435, which holds that the employee causing the loss must be identified to raise liability under an indemnity bond undertaking to make good any loss which an employer may sustain by reason of the act of any employee named in the schedule attached, the amount of liability with respect to each being expressly named, and the bond providing for determination of liability with respect to each employee discovered in default, and therefore no recovery can be had for loss of which the only knowledge is that it must have been caused by one or more of three employees so named.

Insurance — good health — cold. The phrase "in good health" is a comparative term, and the fact that deceased was suffering with a slight cold at the time the benefit certificate was delivered to him, which afterwards developed into pneumonia and caused his death, is held not to defeat a recovery upon the benefit certificate under the stipulation that the insured be "in good health" when the policy is delivered to him, in the Oklahoma case of Sovereign Camp v. Jackson, 157 Pac. 92, accompanied by supplemental annotation in L.R.A.1916F, 166.

Landlord and tenant — option for extension. Under the term of a written lease which gives the lessee, at the expiration of one year, "the privilege of four years more at his option," it is held in the Minnesota case of Luthey v. Joyce, 157 N. W. 708, annotated in L.R.A. 1916E, 1235, that a new lease is not required, and the landlord cannot be compelled to execute a lease for the additional time; upon the exercise of the option by the tenant the original lease becomes a lease for the additional term.

Landlord and tenant — retroactive effect of lease. A written lease of lots, which provided that the time should begin to run from a date in the past, executed between the owner of the lots and a tenant subsequently to the bringing upon the lots of personal property which was immediately mortgaged to secure a balance due for its purchase price, will not, it is held in the Florida case of Ruge v. Webb Press Co. 71 So. 627, be given a retroactive effect in order to defeat the superiority of the mortgage lien over that of the landlord.

A note on antedating lease as affecting priority of landlord's lien accompanies this case in L.R.A.1916F, 446.

Landlord and tenant — right of tenant to purchase tax title. That a tenant who has covenanted to pay the taxes on the leasehold cannot acquire title under a sale for taxes for a year prior to the execution of the lease, is held in the Colorado case of Hurt v. Schneider, 156 Pac. 600, accompanied by supplemental annotation in L.R.A.1916F, 204.

Landlord and tenant — summer hotel — proportional abatement of rent. The period of the tenant's possession, it is held in Ware v. Hobbs, 222 Mass. 327, 110 N. E. 963, annotated in L.R.A.1916F, 276, must be considered, and not merely the months in which the hotel is in use, in determining the just and proportional part of the rent to be abated upon destruction by fire of the building and ter-

mination of the contract under a lease of a summer hotel, the rent for which is to be paid in four equal instalments, one of which is to be paid in the winter and the other three on the first days of June, July, and August.

License — employment agency. Requiring private employment agencies to secure a license before transacting business is held within the police power of the state in People v. Brazee, 183 Mich. 259, 149 N. W. 1053, accompanied by supplemental annotation in L.R.A.1916E, 1146.

This case was affirmed by the United States Supreme Court (1916) 241 U. S. 340, 60 L. ed. 1034, 36 Sup. Ct. Rep. 561, which holds that, without violating the Federal Constitution, a state, exercising its police power, may require licenses for employment agencies, and prescribe reasonable regulations in respect to them, to be enforced according to the legal discretion of a commissioner.

Limitation of actions — recurrent injuries from railroad ditch — amount of recovery. Although actions arise in favor of a landowner upon each recurrent overflow of a ditch along a railroad right of way through the property which the company negligently permits to become filled up, yet it is held in Cincinnati, N. O. & T. P. R. Co. v. Roddy, 132 Tenn. 568, 179 S. W. 143, L.R.A. 1916E, 974, that damages can be recovered in any action only for the injury which has been caused within the limitation period.

The rule that injuries caused by negligence in caring for a legal structure when it was defendant's duty to take care of it gives rise to successive actions as the injuries occur seems to have been conceded in this case. When this point is conceded, the holding that only damages for injuries that occur within the limitation period before suit brought can be recovered logically follows.

Limitation of actions — sickness from operation of manufacturing plant. A good illustration of the rule that unless there is an invasion of plaintiff's property amounting to a trespass, no right of action accrues until some injury has resulted, is furnished by Parsons v. Uvalde Electric Light & Ice Co. 106 Tex. 212, 163 S. W. 1, L.R.A.1916E, 960, which holds that a right of action for damages for sickness caused by the operation of a permanent electric light plant in the neighborhood arises when the sickness occurs, not when the plant is put in operation, if the sickness is not a necessary result of the operation of the plant, but arises from the manner of operation.

The court also in this proposition recognizes the rule that if the injuries are caused unnecessarily by the manner of operating even a legal enterprise, a right of action arises for the particular injury sued for when that injury occurs.

Master and servant — injury by automobile driven by son. The owner of an automobile is held not liable in the Iowa case of Sultzbach v. Smith, 156 N. W. 673, L.R.A.1916F, 228, for injury done by it when negligently driven by his minor son at night, when the son had taken the car for a purpose of his own without his father's knowledge and against his express command, although the father permitted the son to use the car at certain times and had known of his taking it at forbidden times.

Master and servant — intoxication — negligence. That a section foreman of a railroad company, who was injured in the company's yards, was in a state of intoxication at the time, is held evidence of contributory negligence in Anderson v. Missouri P. R. Co. 95 Neb. 358, 145 N. W. 842, followed by supplemental annotation in L.R.A.1916F, 95.

Master and servant — workmen's compensation — injury by malpractice of surgeon. Injury from malpractice of the surgeon secured by the employer with funds contributed by employees, to attend an injured employee, is held in Ross v. Erickson Constr. Co. 89 Wash. 634, 155 Pac. 153, L.R.A.1916F, 319, to be within the operation of a compensation act providing relief for injured workmen, withdrawing all phases of the premises from private controversy, and abolishing the jurisdiction of courts over

such causes, so that if compensation has been made for an injury no action can be maintained by the employee against the employer or surgeon.

Negligence — bursting of bottle — injury — liability. The mere fact that a bottle containing a carbonated drink, which had been placed on ice, burst when the lid of the ice chest was lifted, is held not sufficient to show negligence on the part of the bottler in the Mississippi case of Wheeler v. Laurel Bottling Works, 71 So. 743, so as to charge him with liability for the resulting injury to the one opening the chest.

The applicability of the rule of *res ipsa loquitur* to the explosion of a bottle is considered in the note accompanying the foregoing decision in L.R.A.1916E, 1074.

Negligence — dangerous article — nails in shoes. A manufacturer of shoes who conceals the fact that he has used nails to fasten on the soles is held not liable in the Wisconsin case of Kerwin v. Chippewa Shoe Mfg. Co. 157 N. W. 1101, L.R.A.1916E, 1188, to one purchasing from a retailer, who is injured by a nail penetrating his foot, since such shoes are not inherently dangerous.

Negligence — raising locomotive — injury to bystander — liability. One watching the raising of a derailed locomotive, who, after having been forced back by the police because of danger, stands just off the railroad right of way, and is injured by the hurling against him of a portion of the engine which gives way under the strain of the cables used in the work, is held not entitled in the Washington case of Shafer v. Tacoma Eastern R. Co. 157 Pac. 485, annotated in L.R.A.1916F, 114, to recover damages from the railroad company for the injury sustained, although he deemed the place where he stood to be safe.

Negligence — unsafe premises — wandering from path. Plaintiff was upon the premises of defendant, at his invitation, for the transaction of certain business with him. Upon the completion of her mission, and in taking her departure therefrom, instead of passing down the walk extending from the building to the street, she cut across the yard and came in contact with a wire stretched along the outer edge of the premises by defendant to keep persons from trespassing upon the lawn, and was injured. It is held in the Minnesota case of Mazey v. Loveland, 158 N. W. 44, annotated in L.R.A.1916F, 279, that, on leaving the premises in the manner stated, plaintiff became a mere licensee, took the premises as she found them, and defendant was under no legal duty to warn her of the presence of the wire, even though he observed her going in the direction of the same.

Nuisance — continuance — action by successor in title. One who purchases real estate after the erection thereon of a permanent structure, a stone and cement sewer or culvert which will continue indefinitely without change from any cause but human labor is held entitled in Ottumwa v. Nicholson, 161 Iowa, 473, 143 N. W. 439, L.R.A.1916E, 983, to maintain an action for the resulting injury, if the structure causes a nuisance to arise after he purchases the property.

In Powers v. Council Bluffs (1877) 45 Iowa, 652, 24 Am. Rep. 792, the court, apparently misled by some dictum in Troy v. Cheshire R. Co. (1851) 23 N. H. 83, 55 Am. Dec. 177, adopted the rule that "wherever the nuisance is of such character that its continuance is necessarily an injury, and where it is of a permanent character that will continue without change from any cause but human labor, there the damage is an original damage and may be at once fully compensated."

The Iowa court has, in many cases practically nullified the rule adopted in the Powers Case by combining it with various rules that involve the characteristics of the injuries, and by refusing to apply it under some circumstances and applying it under others. In Ottumwa v. Nicholson the court restated the old rule, but holds that it is not applicable where the injury is not contemporaneous with the construction of the cause thereof, although the sewer was made of

concrete. In the Powers Case the injury was not only not contemporaneous with the construction of the cause, but it was continuous and gradual; *i. e.*, the erosion of plaintiff's land by the natural flow of a stream.

Nuisance — flooding land — permanent injury — single action. That one action only lies for the injury to land through flooding by a dam erected by a city as a permanent structure, in which the recovery must be the difference in value of the land immediately before and immediately after the completion of the structure is held in Irvine v. Oelwein, 170 Iowa, 653, 150 N. W. 674, annotated in L.R.A.1916E, 990.

Officer — failure to take bond — civil liability. County commissioners are held not civilly liable in the North Carolina case of Fore v. Feimster, 88 S. E. 977, L.R.A.1916F, 481, for failure to take the bond required by statute to protect laborers and materialmen when contracting for the construction of a public building, where the statute merely makes them guilty of a misdemeanor for such neglect, while provisions requiring them to take bonds for other purposes imposed civil liability upon them for failure to comply therewith.

Railroad — killing cattle — obstruction of view of tracks. A railroad company is held liable in the Kentucky case of Chesapeake & O. R. Co. v. Mason, 185 S. W. 71, annotated in L.R.A.1916F, 127, for killing cattle upon its right of way because it could not discover their presence in time to stop the train, on account of obstruction of view by branches projecting over the right of way from trees on abutting property, even though the trees belong to the owner of the cattle.

Railroads — free storage of baggage. Railroads should give free storage of baggage, both sample and personal, received after noon on Friday and claimed before noon the following Monday, it is held in the Missouri case of Deane v. Atchison, T. & S. F. R. Co. 3 Mo. P. S. C. R. 466, P.U.R.1916E, 182.

Recognizance — extension — subsequent term. A recognizance conditioned that the party charged shall appear and answer to a certain charge that may be preferred against him at a named term of the court, and to do and receive what shall be enjoined by said court upon him, and not depart from the said court without leave, may be extended it is held in Knight v. State ex rel. Henry, 35 Okla. 375, 130 Pac. 282, to any subsequent term of said court by a continuance of said cause to such term.

The party charged failing to appear at such subsequent term, such recognizance may be duly forfeited and enforced against the sureties thereon.

The question of time and place covered by a recognizance or bail bond in a criminal case is treated in the note appended to the foregoing decision in L.R.A.1916F, 361.

Sale — change of possession — sufficiency of words to effect. Words are held sufficient in Wilson v. Hotchkiss, 171 Cal. 617, 154 Pac. 1, annotated in L.R.A.1916F, 389, to show a change in character of possession of personal property, from that of bailee in possession to that of purchaser under an oral contract, so as to satisfy the statute of frauds.

School — unsafe condition of schoolhouse — liability. A school district incorporated for educational purposes is held not liable in the Michigan case of Daniels v. Board of Education, 158 N. W. 23, L.R.A.1916F, 468, for injury to a pupil in the school because of a defectively planned railing along a stairway which permits him to fall over it down the shaft in which the stairs are built; and it is immaterial that it permits the building to be used for public gatherings with some incidental profit.

Nor are the members of a school board individually liable for adopting a plan for a schoolhouse with an insufficient balustrade along the stairway to prevent children from falling over it, and maintaining the stairway in that condition, to a child who falls over it to his injury.

Street railways — extensions — to serve employees of manufacturing establishment. That a street railway extension will be of use mainly to employees of a single manufacturing concern is not of itself sufficient to warrant the withholding of a certificate of public convenience, it is held in the New York case of Re Brooklyn Heights R. Co. P.U.R.1916E, 220, as the employees must be considered as prospective passengers without regard to their employment by one or by several concerns.

Tax — on one kind of coal — validity. Placing a tax on anthracite coal mined within the state, and leaving exempt the bituminous coal so mined is held to violate a constitutional provision that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same in Com. v. Alden Coal Co. 251 Pa. 134, 96 Atl. 246, annotated in L.R.A.1916F, 154.

Tax — real estate — enhanced value because of business. In fixing the value of real estate for taxation, it is held in the Delaware case of Claringbold v. Council of Newark, 94 Atl. 1102, L.R.A. 1916E, 1101, that enhanced value, if any, by reason of a right to sell intoxicating liquors on it, may be taken into consideration.

Telephones — discontinuance of night service. A telephone company with 448 installations, it is held in the Wisconsin case of Re New Cashton Teleph. Co. P.U.R.1916E, 123, should not be allowed to discontinue unlimited night service given without extra charge, and to charge 10 cents for night calls except those to physicians and on account of fire.

Telephones — Commission — power to compel declaration of dividend. That the Minnesota Commission cannot, in the absence of express authority, compel a telephone company to declare a dividend, is held in the case of Re West Concord Farmers' Teleph. Co. P.U.R. 1916E, 178.

Trespass — continuing injury — action by successive owners. Successive owners of property injured by the diversion of water from a stream by a corporation organized to furnish a public water supply may, it is held in Wagner v. Purity Water Co. 241 Pa. 328, 88 Atl. 484, L.R.A.1916E, 981, maintain action for injuries done to them as for a continuing trespass until there has been an original lawful taking, or until damages have been recovered on the basis of a permanent unlawful taking.

A peculiar feature of this decision is that the court adopted the appellant's premise, *i. e.*, that the wrong gave rise to a right to but one action, in which all damages—past, present, and future —must be recovered, devoted practically the whole opinion to the fortification of this premise, and then denied appellant's conclusion in the somewhat arbitrary statement that "we think appellee had standing to assert a claim for the same in an action of trespass," notwithstanding appellee was a subsequent purchaser.

This conclusion, however, may be accounted for by the fact that the court treated the appropriation of the water as a "continuing trespass," analogous to an appropriation of land by a corporation having the power of eminent domain without first condemning the land. After classifying the acts of defendant as a trespass instead of a nuisance, its decision that a subsequent purchaser had standing to maintain the action, not for the original diversion, but for the continuance of the wrong, is supported by good authority, but not by all courts.

Vendor and purchaser — lien for purchase money paid. A lien it is held in the Washington case of Ihrke v. Continental L. Ins. & Invest. Co. 157 Pac. 866, L.R.A.1916F, 430, exists in favor of one who has entered into an executory contract for the purchase of real estate for the purchase money paid, which, upon default of the vendor, justifying a rescission by the purchaser, takes precedence of a mortgage subsequently placed on the property.

Water — hastening flow — liability. One is held not liable in Trigg v. Zim-

merman, 90 Wash. 678, 156 Pac. 846, accompanied by supplemental annotation in L.R.A.1916F, 424, for hastening by artificial means the flow of water along a swale crossing his land, although he thereby increases the water standing on the lower land, if the water is not diverted from its natural course.

Recent English and Canadian Decisions

[Note.—The more important of these decisions will be reported, with full annotations, in British Ruling Cases.]

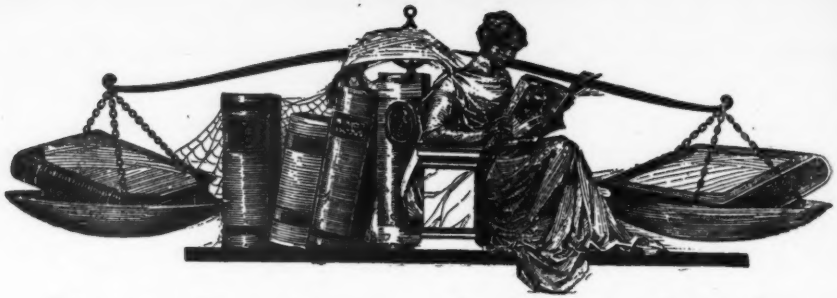
Master and servant — breach of statutory duty to protect elevator shaft. The fact that a boy, while scuffling with another boy near an elevator shaft protected by a closed door, on falling heavily against the door caused it to spring away from the slot in which it moved up and down, so that he fell down the shaft and was killed, together with some evidence that one of these slots was loose to a certain extent at the place of the accident, and that it was warped, was held in Owen v. Saults & Pollard, 26 Manitoba L. R. 362, 28 D. L. R. 287, to warrant the jury in finding that there had been a breach by his employer, the occupant of the premises, of the duty imposed by statute to protect factory elevator shafts by good and sufficient doors. It was also held that the action could not be defeated on the ground of contributory negligence because the boy was wrestling when he slipped and fell.

Mortgages — claim of mortgagees to insurance money — marshaling. That the equitable doctrine of marshaling has no such application as to entitle the mortgagee of premises which are subject to a prior mortgage also covering the property of a third person, to have the claim of the prior mortgagee to the proceeds of insurance on the mortgaged premises thrown wholly upon the fund derived from the insurance on the premises of the third person, so as to leave the insurance on the other premises for the second mortgagee, is held in Dominion Lumber Co. v. Gelfand, 26 Manitoba L. R. 350, 28 D. L. R. 262, the court taking the view that the claim of the first mortgagee should be paid ratably out of the two funds and only what was left of the second fund applied toward payment of the second mortgagee's claim.

Negligence — unsafe scaffolding — duty of contractor toward workmen of subcontractor. That a principal contractor who has agreed "to afford facilities to any other tradesmen employed . . . in the building, and to include the reasonable use of any scaffolding already erected for his own purposes so that their work may proceed during the progress of his contract," and who has also agreed that all specialists, merchants, tradesmen and others executing any work or supplying any goods for the purposes of the contract, who might at any time be nominated by the principal, should be regarded as subcontractors employed by the contractor, sustains the relation toward persons doing other work on the premises, and in the performance thereof making use of scaffolding erected by him, of an inviter and not that of a mere licensor,—is held in Elliott v. C. P. Roberts & Co. [1916] 2 K. B. 518.

Wills — codicils — revocation — revival. A will which has been revoked by a subsequent will may be reinstated by a later codicil in which it is referred to by date and expressly confirmed, though no mention is made therein of the subsequent will. Findlay v. Pae, 37 Ont. L. Rep. 318, 31 D. L. R. 281.

Wills — codicils — revocation — re- "servants" — right of farm laborers to participate. That farm laborers in the employ of the testator are not entitled to the benefits of a bequest "to each of my servants who shall have been in my service for three years prior to my decease," but that the persons comprised in such description are only those who ministered in some way to the testator's personal comfort or his wants, is held in Re Forrest [1916] 2 Ch. 386.



New Books and Periodicals

In science read by preference the newest works.—Bulwer-Lytton.

Lawyers Reports Annotated, 1916E. (Lawyers Co-operative Publishing Company, Rochester, N. Y.). This volume maintains the standard of its predecessors both as to quantity and quality of annotation. Among the topics covered are: What notice is necessary to due process of law in tax proceedings; Notice as affecting priority of assignment over garnishment; Parol evidence to affect scope of covenants; Declarations to show delivery of gifts; Collateral attack on judgment because of insufficiency of pleadings; Confiscation of right of innocent person in property used in violation of law; Successive actions for nuisance.

The volume contains more than a hundred annotations, and each annotation contains an exhaustive collection of authorities so set out that the distinctions are readily available to the user at a glance.

Public Utilities Reports Annotated, 1916E. This volume containing over 1100 pages, aside from the Index, of decisions of the Public Service Commissions and of the State and Federal Courts, is uniform in style and appearance with the preceding volumes of this series.

Such important questions as Discrimination, Extension of Service, Payment for Service, Physical Connection of Railroads, Telephones, and Water Utilities, Rates, Return and Valuation of Public Utilities are well represented by the cases.

Exhaustive notes reviewing the numerous Court and Commission cases upon the right to require a consumer to pay for installing and maintaining service connections and upon the question of the ownership and maintenance of meters are presented on pages 447 and 953 respectively.

Addresses on Government and Citizenship. By Elihu Root. Collected and edited by Robert Bacon and James Brown Scott (Harvard University Press, Cambridge). $2.00.

This is the second volume in the series of collected addresses and state papers of Elihu Root. The first volume was devoted to papers on international subjects. This one is devoted to discussions of the American system of government and the citizen's relation to it. It opens with the Dodge lectures delivered at Yale University in 1907 on the subject, "The Citizen's Part in Government," and the Stafford Little lectures delivered at Princeton University in 1913, on "Experiments in Government and the Essentials of the Constitution." Both these series of lectures were already in print, but their omission from what will be the definitive edition of Mr. Root's writings would have been a serious loss. Next come the speeches made in the New York constitutional conventions of 1894 and 1915, in the first of which Mr. Root was chairman of the committee on the judiciary, while of the second convention he was president. Particularly notable among this group of addresses are those on sectarian education and on invisible government, the argument in both of which goes to the fundamentals of the American political system, and is applicable in every state in the Union. Another group of addresses, which the editors entitle "Government," comprises his speeches in the Senate on the Lorimer Case, the Banking and Currency Bill, the Arizona Constitution, and the direct election of United States Senators. The latter is the ablest argument against the new method which the present writer has seen, and is especially notable for its opposition to the proposal adopted by the House of Representatives, that the election of Senators should be entirely controlled by the several states. Here, also, are various occasional addresses devoted to the functions of the states and to the philosophy of self-government. The last section of the volume is devoted to addresses on the administration of justice, and fittingly concludes with the address delivered as President of the American Bar Association on August 30 last, in which Mr. Root made a strong plea for a more adequate preparation for admission to the bar, and called attention to the unenviable distinction achieved last year by Massachusetts, whose legislature declared by statute that two

years' attendance at an evening high school would supply all that a practitioner need possess in the way of general education.—Lawrence B. Evans.

"Employers' Liability, Workmen's Compensation and Liability Insurance." By Jeremiah F. Connor (The Spectator Company, 135 William St., New York). $5.00.

The Workmen's Compensation Law of the State of New York (chapter 67 of the Consolidated Laws, as enacted by chapter 816 of the Laws of 1913 and re-enacted by chapter 41 of the Laws of 1914, with amendments) made a radical change in relation to the liability of employers for damages because of accidental injuries. The result has led to much confusion between injuries which are compensatable and injuries which may be made the basis of damage suits.

This work is intended to relieve this confusion. In part I. the compensation act is explained, and cases of dual liability and optional remedies, as well as cases which are not covered in any manner by the compensation law, are classified and supplemented by such annotations of authorities as are available.

Part II. is devoted to the subject of compensation and liability insurance.

Part III. contains the Workmen's Compensation Law as amended, including all amendments made by the legislature of 1916. It is annotated with all decisions of the courts under the New York act and with decisions of the Workmen's Compensation Commission and its successor, the State Industrial Commission.

The appendix contains the Employers' Liability Act of New York State, the Elective Compensation Law, and the provisions of the state Constitution affecting the liability of the employers and the rights of employees, together with the Federal Employers' Liability Act.

The distinctions between the different forms of employers' liability are based, to a large extent, upon the law in New York state. They apply to the subject generally however, and especially to those states having compensation statutes similar to the New York act. The part devoted to state insurance applies to all states where the state insurance fund is created to operate in competition with other forms of insurance, except in so far as the wording of the statutes may be different. The annotations to the compensation law cover a wide field. The cases passed upon by the courts include those in which no opinions were written.

This work will be found useful by lawyers and in every insurance office where workmen's compensation is written, and will also prove of interest to employers whose workmen come under the terms of the act in whole or in part.

"The Prosecution of Jesus." By Richard W. Husband (Princeton University Press, Princeton, N. J.). $1.50 net.

The writer of this volume is convinced that the approach to the study of the trial of Jesus should be made through the Roman, and not, as is commonly done, through the Hebrew, criminal law. He regards the hearing before Pilate as the only trial that occurred, and holds that the hearing before the Sanhedrin could have been nothing else than grand jury proceedings.

The author concludes that the course of trial in the Roman court was legal, since it harmonized with the procedure pursued by governors of provinces in hearing criminal cases. It follows that the conviction was legal and was justified, provided the evidence was sufficient to substantiate the charges.

"But the accounts of the trial are so incomplete," states Professor Husband, "that it cannot be demonstrated whether the evidence would be considered adequate by an unbiased Roman lawyer, not under stress of surrounding excitement and mob impulse."

The work is carefully prepared and is the result of much special study. It is accompanied by a valuable bibliography. It deals in an able manner with a subject possessing perennial interest.

"The War and Humanity." By James M. Beck, LL.D. (G. P. Putnam's Sons, New York.) $1.50.

This volume is based on several addresses made by the author, and later largely changed to the form of literary essays, with the addition of considerable material. In this way he has placed in permanent form some of his contributions to the controversial history of the War. The motif of the work is disclosed by its subtitle, "A Further Discussion of the Ethics of the World War and the Attitude and Duty of the United States." In fact, it may be regarded as a sequel to the author's book, "The Evidence in the Case," which discussed. in the light of diplomatic records, the moral responsibility for the War of 1914.

The essays included in the book treat such subjects as "The Submarine Controversy;" "The Case of Edith Covell;" "The Foreign Policy of President Washington;" "America and the Allies," and "The Vision of France."

There is much of the force and fervor of the spoken word still clinging to the lines of this volume. They breathe the spirit of the occasions which called them forth.

"The Last Line and Other Poems." By E. Vine Hall. (T. Fisher Unwin Ltd., Adelphi Terrace, London, England.) 2/6 net.

The author of "The Romance of Wills and Testaments," a work known to many of our readers, has brought out a little book of charming verse. The greater number of the poems reflect the lights and shades of England's recent battle-years. They tell of nameless heroes, of dauntless courage, of the ordeal by fire that exalts men and nations. In them we glimpse the play of spiritual forces at work in human affairs.

There are also serener verses, embodying such fancies as one might dream amid blossoms or by fireside embers.

Lovers of poetry have a treat awaiting them in Mr. Hall's book.

"Acceptances: Their Importance as a Means of Increasing and Simplifying Domestic and Foreign Trade." Prepared and issued by the American Exchange National Bank, 128 Broadway, New York.

The monograph on Acceptances, prepared and issued by this bank last April, attracted such wide attention and was so favorably received that it has issued a supplement presenting additional data and also the amendments to the Federal Reserve Act affecting acceptances, as passed during the recent session of Congress. A short treatise is also given on the Federal Bill of Lading Act, which has an important bearing on acceptances.

A copy of the pamphlet will be sent on application to the bank.

Jones, Telegraph and Telephone Companies, 2d ed., 1 vol. $7.50.

Brandenburg, Bankruptcy, 4th ed., 1 vol. $10.00.

Babbitt, Motor Vehicles, 2d ed., 1 vol. $7.50.

Hagar & Alexander, Bankruptcy Forms, 2d ed., 1 vol. $9.00.

Recent Articles of Interest to Lawyers

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"Motions to Dismiss or to Direct a Verdict, as Instruments of Review.—11 Bench and Bar, 190.

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"National Banks as Executors, Administrators, and Trustees."—49 Chicago Legal News, 132.

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"Trust Company as Trustee under Will or Deed."—33 Banking Law Journal, 807.

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Carriers.

"The Liability of a Carrier under a Bill of Lading When the Goods Have Not Been Received by the Carrier."—15 Michigan Law Review, 38.

China.

"Japan in the China Shop."—Everybody's Magazine, December, 1916, p. 641.

"Rules of Conduct Enforced in China."—23 Case and Comment, 541.

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"Amending Procedure of the Federal Constitution."—10 American Political Science Review, 689.

"Confused Sovereignty."—11 Illinois Law Review, 225.

"Need for a More Democratic Procedure of Amending the Constitution."—10 American Political Science Review, 683.

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"The Judicial Veto and Political Democracy."—10 American Political Science Review, 700.

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"A Bibliography on the Relations of Crime and Feeble-Mindedness."—7 Journal of Criminal Law and Criminology, 544.

"Indeterminate Sentence, Release on Parole and Pardon (Report of the Committee of the Institute)."—7 Journal of Criminal Law and Criminology, 492.

"Insanity and Criminal Responsibility (Report of Committee 'A' of the Institute.)"—7 Journal of Criminal Law and Criminology, 484.

"The Binet Scale and the Diagnosis of Feeble-Mindedness."—7 Journal of Criminal Law and Criminology, 530.

"The Crown Side of the 'Eyre' in the Early Part of the Thirteenth Century."—7 Journal of Criminal Law and Criminology, 495.

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"Direct Primary Legislation in Michigan."—15 Michigan Law Review, 20.

"Operation of the Direct Primary in Michigan."—10 American Political Science Review, 710.

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"Mexico's Need—Religious Freedom, not American Intervention."—The Fra, December, 1916, p. 85.
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"Notice through an Agent."—65 University of Pennsylvania Law Review, 1.
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"Frequency and Duration of Parliaments."—10 American Political Science Review, 654.
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"Duty of Motorist at Railroad Crossings."—83 Central Law Journal, 370.
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"Double Inheritance Tax Avoided."—23 Trust Companies, 443.
"The Inheritance Tax—Double and Multiple."—27 American Legal News, 17.
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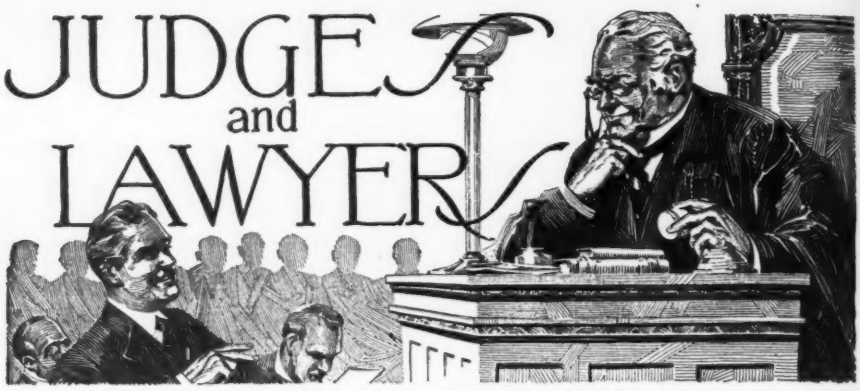
"Two Empires at Grips."—Everybody's Magazine, December, 1916, p. 670.
Workmen's Compensation.
"Workmen's Compensation—Decision of Industrial Board."—49 Chicago Legal News, 138.

Persistence of Custom

It is a present-day custom for the members of the English Parliament to bow three times before taking their seats. An American, mystified by this strange custom, inquired the reason of it. He was astonished to find the Englishman could not tell him. No one seemed to know, not even the men who did the bowing; but, after much research, the mystery was cleared away. The buildings of Parliament had once burned, and the members were quartered for a period in St. Stephen's Chapel. Having the altar of the church before them, they made the customary bow to Father, Son, and Holy Ghost. When they moved into their present abode they did not take the altar with them, but they kept on bowing nevertheless.

Institutions survive the reasons for their existence. Mental habits yield reluctantly to changed conditions. The chasm widens between old custom and present need, and every age requires its moral engineers to bridge the chasm and rationalize the ways of life.—Herbert S. Bigelow.



Hon. Theodore E. Hancock

Former Attorney General of New York

ONE of the distinguished lawyers of the state, Honorable Theodore E. Hancock, died at his residence in Syracuse, New York, on November 19th.

"The General," as he was affectionately called by many of his friends, was a prominent figure in Syracuse's legal development and its political history. From a struggling young attorney he rose gradually to high offices through his perseverance, remarkable ability, and indomitable will. Years of study and application gave him a thorough knowledge of the law, and his friends always remarked that he had the law of the state at his fingers' tips. A genius at analyzing knotty legal problems and working out their solution in a remarkably brief period of time, he was not only intrusted with many of the most important cases ever tried in that section of the state, but he was often called in as advisory counsel by other practitioners, and his sage advice followed closely by his colleagues.

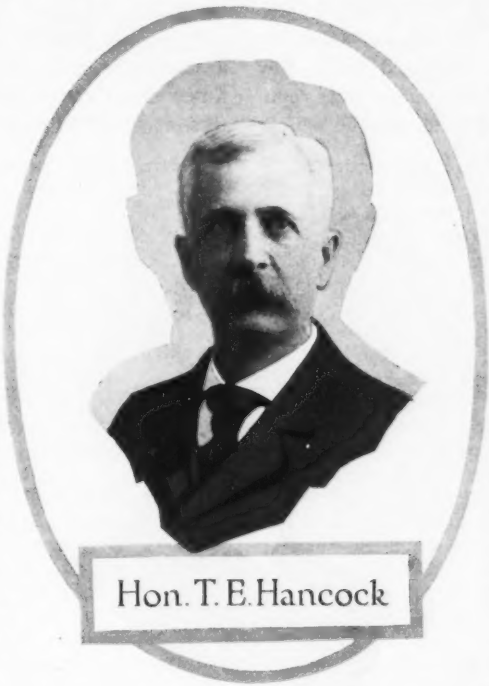
During his years of legal work he was a friend of the poor and oppressed. Many attorneys of to-day take pleasure in relating little incidents of his career, showing how he took cases without compensation when he was once satisfied the cause of the client was just, and fought them to a successful termination, often against great odds. He always had one rule in the practice of law, and that was never to waste energy upon points which did not count. He made the move which was necessary to win.

Theodore E. Hancock was born at Fulton, Oswego county, May 30, 1847, his parents being Freeman and Mary Williams Hancock. Freeman Hancock was of English descent and an abolitionist teacher of note, while Mary Williams was of French descent, but born in Providence, Rhode Island. These parents were of Martha's Vineyard stock, the kind of a family which have several generations of sailors to boast about, men who faced the rigors of long whaling voyages, and women who had learned the patience that comes with watching and waiting.

Mr. Hancock attended Falley Seminary at Fulton, New York, in early life, and in 1871 was graduated from Wesleyan University. Then he attended Columbia Law School and was graduated in 1873, when upon September 1 of that year he commenced the practice of law in Syracuse. Mr. Hancock formed a law partnership with William Gilbert, under the firm name of Gilbert & Hancock; later Mr. Hancock was associated with Page Monroe, the firm name being Hancock & Monroe. In 1888 the fam-

ous old law firm of Hancock, Beach, Peck, & Devine was formed.

It was in 1889 that Mr. Hancock was elected district attorney of Onondaga, an office which he administered with singular ability. On November 7, 1893, he was elected attorney general, and at the next state election was elected to succeed himself, serving in that office until January 1, 1899. William A. Beach retiring from practice, John W. Hogan, who had served long in the attorney general's office in Albany, came from Watertown, and the firm of Hancock, Hogan & Devine was then formed. Some time after the death of Mr. Devine, in 1907, Stewart F. Hancock, son of Theodore F. Hancock, was admitted to the firm, and it became Hancock, Hogan & Hancock. The firm to-day is Hancock, Spriggs, & Hancock, the late Mr. Hancock having acted in an advisory capacity.


Hon. T. E. Hancock

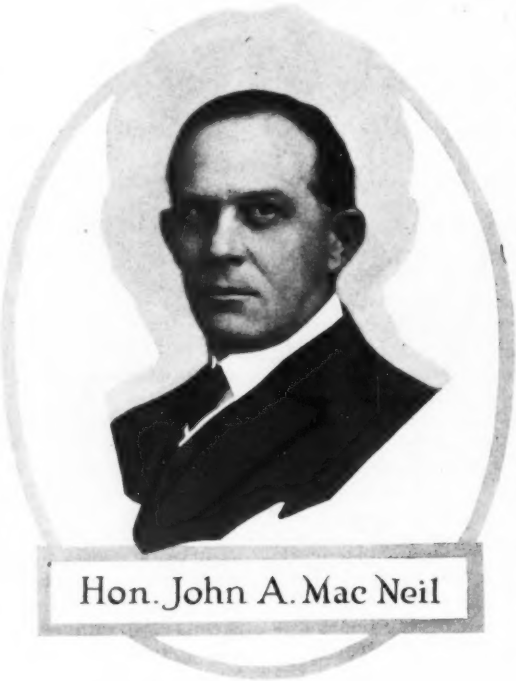
The press and bar of his home city unite in paying him a high tribute of esteem. Those who knew him best say that his record as a lawyer was busy and varied, and marked by solid achievements. He combined in an unusual degree the qualities which marked the office counselor and those which shine in the more picturesque, if not more important, arena of the trial court. As an adviser, he was wise, prudent, and learned; and as an advocate he excelled in energy, courage, and enthusiasm, as well as in that *sine qua non* of trial practice, the judicious employment of the oratorical faculty. He had a wide and sound knowledge of the law, great intuition, rare analytical powers, and remarkable ability in the trial courts as an examiner. He was especially strong in cross-examination of witnesses, and the witness whose story bore the framework of fabrication experienced great trouble when he was delivered into Mr. Hancock's hands. His persuasive arguments were almost legal classics in their diction and clarity of expression. He fought his legal battles with all his powers, but kept within the bounds of professional courtesy toward his legal opponent. What he did in the public interest was characterized by the same spirit with which he conducted his legal practise or maintained his association with his fellow men,—the same lofty idealism, the same sincerity and honesty of purpose, the same courageous and unflinching integrity in act and opinion, the same keen understanding, the same exceptional ability to achieve in a big and purposeful way, the same broad sympathy. He ranked among the best attorney generals the state has had in our time, and he returned to private practice with his fame as a lawyer and a public man measurably enhanced.

Mr. Hancock was democratic in his tastes, unassuming in manner, companionable by nature. He was always popular in his home town, among all classes, for he had those qualities which make one friends.

Hon. John A. MacNeil

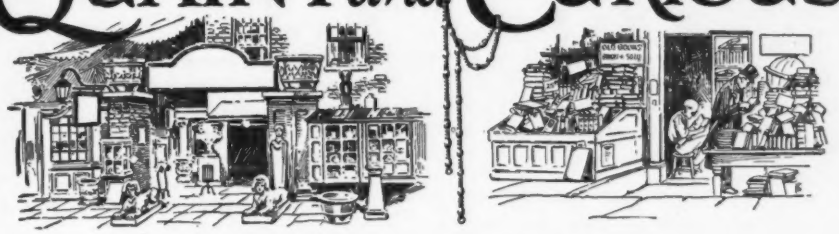
Prominent Illinois Lawyer and Legal Writer

JUDGE JOHN A. MACNEIL, of Olney, Illinois, whose new work on Evidence, though published but a few months ago, has made him a wide reputation in his home state, was born near Kenney, De Witt county, Illinois, in 1876. He was educated at Eureka, a historic college town, where, after his admission to the bar, he practised law until 1901, removing to Olney, where he has since resided. Judge MacNeil has a unique record and evidently was a born lawyer, passing the examination for admission to the bar at the age of nineteen, elected county and probate judge at twenty-five, — at that time the youngest judge in the state,—and was re-elected, producing, in the meantime, two standard law books, one of which was published before he was twenty-two years of age. His new work is a large and pretentious volume, and is a departure from old methods, giving a new classification and added interest to this phase of the law. His genius in the treatment of this age-old subject has at once placed him in the front ranks of legal writers of Illinois, a state that has produced some notable names in that line of endeavor. This work is said to have had a larger sale in Illinois than any other law book. The subject of this sketch is not only a legal writer, but is well known as a trial lawyer, takes part in all political campaigns, and enjoys being on the stump, and has participated in many dignified contests of the political field or forum. His accomplishments have distinguished him as one of the able men of Illinois.



Hon. John A. Mac Neil

QUAINT and CURIOUS



Each change of many-colour'd life he drew.—Johnson.

An Erratic Motorist. A warrant issued by a Virginia Justice of the Peace reads as follows:

"That the said W. A. W. did unlawfully exceed the speed limit of a car, Ford license applied for, said limit being 10 miles per hour, while being intoxicated, and strike the buggy of the said J. E. P. and said same, it being out of the road, this being on the A. pike."

Limiting Liability. A daily paper in one of our large cities contains the folfollowing unique notice:

After this date I will not be responsible for any bills except those contracted by any other than myself.

(Signed) John F. M.

Nov. 29, 1916.

Stories They Tell. As the result of Judge Landis's peculiar sense of humor many "stories" have gone the rounds.

While practising law he was engaged in a case before Federal Judge Christian Kohlsaat. There were two other Federal judges in Chicago. They were Judge James Henley and Judge Peter Grosscup.

Judge Kohlsaat called young Landis to the bench.

"Say," he said to the young attorney in a severe tone, "I understand you have been referring to me as 'Chris' Kohlsaat?"

Young Landis grinned and said:

"I'll bet I know who told you that. It was either 'Jim' Henley or 'Pete' Grosscup.

His sense of humor has never deserted him.

Recently a boy of twenty was convicted in Judge Landis's court of falsifying his age in an attempt to obtain a position in the Chicago post office. This was trifling with Uncle Samuel in a dangerous way. If it is something to be condemned for a boy of twenty to try to get a post office job, to lie about his age is worse. Which may or may not have been the reason for the boy's indictment, trial, and conviction.

But Judge Landis, who sat through the trial, seems to have agreed that since everybody else had had their share of the fun it was incumbent upon him to oblige the assembled company. He can crack a joke and keep his face straight. So, instead of making a long solemn speech to the boy impressing him with the seriousness and enormity of lying about his age to get a government job, and sending him to prison, he ordered the convicted youth to pay a fine of 1 cent and to sit in a court room chair for two minutes.

No Compromise. During a recent trial in one of the courts of Baltimore city, the object of which was to set aside a certain deed of trust, a large, portly German woman was called as a witness for the plaintiffs. Her testimony was for the purpose of showing the mental incapacity of the grantor, whose name we will call Margaret E. Jones. After the witness took the stand and was sworn, the examination commenced as follows:

Atty. for Plffs.: "Did you know the late Margaret E. Jones?"

Witness: "Yep, she was grazy."

Atty. for Defts.: "We object."

Witness: "You can object all you want, but she was grazy, chust the same."

Court: (seeking to placate the witness who was becoming very irritable)

"Madam, we have certain rules for the giving of testimony in a court room, and I wish that you would try and give your answers to the questions without volunteering information."

Witness: "Chuj, your Honor, I know all about dem rules, but ven I say Maggie Jones was grazy I mean she vos as grazy as h— and if you dont vant me to tell you she vos grazy I go home."

A Law Day at Pepperville. Inquiry was made, and the discussion was animated and lengthy as to why Attorney Doolin, "the Beaver," had left the court room in such a huff. As there was nothing else to do in court, about an hour's valuable time (?) was spent in the discussion, and every conceivable reason was advanced, but not one of them satisfied anyone except the man who advanced it. Some of them did agree on one thing, and that was that they believed, each his own theory, but didn't believe it "for sartain." Finally the question was addressed to the court for a judicial opinion. The squire adjusted his quid of tobacco, and said he couldn't "arrive at any judgment on the trouble, but he knowed that the Beaver came in objectin' and went out exceptin'." On this the crowd adjourned to the outside, to witness a general dog fight,—the invariable aftermath.—Wm. Herndon.

Electricity in Court. Dynamos, motors, and other electrical apparatus whizzed and whirred on November 1, in the supreme court chamber at the capitol when the justices viewed the miniature mining plant in full operation. The demonstration, unique in the court history, was held to give the justices an actual view of a mining plant in operation, one used in many countries, and attacked as invalid in a case recently reargued.

The whole process of concentrating ores, by what is known as the "oil flotation" process was worked out. Electrical power to operate the improvised machinery was secured from the capitol's plant.

Ingenious Jurymen. Playing cards, dice, and checkers, all of their own making, was the experience of a Federal court jury in Seattle. The case was submitted to the jury at 4 o'clock in the afternoon. At 6 o'clock, unable to agree, the members of the jury were taken to dinner, and after their return they deliberated on the case until 2 o'clock in the morning.

Deadlocked by the action of one member, further consideration was refused, and one of the jurors called upon the bailiff for a deck of cards. The request was refused. He notified the jurors that to comply with it would be to violate the law.

Thereupon it was decided to make their own cards, and ten of the jurors proceeded to build a deck of cards out of the luncheon boxes in which they had brought sandwiches to the jury room, which they obtained following their dinner and in anticipation that they were in for a long session.

While four then proceeded to play pitch, another member put his hand in one of the pockets of the card player, where enough lumps of sugar were found to make a set of dice, he having taken the sugar while at dinner and placed it in his colleague's pocket without any idea that he would find such use for it later.

Two more of the jurors were yet to be supplied, however, and these latter decided on turning a blotter they found in the room into a checker board, which was immediately done, a dance program which hung on the wall being cut up for use as checkers.

The nonassenting member of the jury and one other decided upon a sleep. There was no further deliberation on the case, the jurors continuing to play their games and sleep until the opening of court the next morning, when they reported to the court they they were unable to agree, and they were discharged. —Nebraska Legal News.

Live in the sunshine; and let your shadow be the only shady thing about you.

Favored by circumstances. "Wonderful time that aviator made!"

"Yes," replied Mr. Chuggins. "But think of the advantage she had. Not a traffic policeman on the entire route."—Evening Star.

Meant well, anyhow. Mike Gilligan entered a police office and intimated that some abominable thief had stolen his watch. It was a valuable watch, but, more than that, it had been given to Michael by his father back in County Clare. He told a very stirring story about his loss. The officer at the desk was very much impressed.

"We'll leave no stone unturned to find your watch, Mr. Gilligan," he said.

"Thank ye, sir," said Mike. "It was a fine watch." And Mr. Gilligan went home and then found his watch. It had slipped from beneath the pillow and in some way landed beneath the sheets. He hurried back to the police office to report the fact and save the police further trouble. On the way he came across a gang of laborers tearing up the road for sewer purposes.

"Hi, boys," called Mike, "leave them stones alone, don't turn any more, I've found my watch."—Pittsburgh Chronicle-Telegraph.

Neglected things. Judge Wilson, of Ohio, was noted for his wit. One evening several prominent lawyers assembled in his office. One said: "Judge, I have made a comfortable fortune at the bar; and now I think of retiring and devoting the remainder of my years to the study of those things that I have neglected. What would you advise me to begin on?" "Law," promptly replied the judge.—Christian Register.

A puzzled witness. "Now, sir," demanded the cross-examining lawyer, "did you or did you not, on the date in question or at any other time, say to the defendant or anyone else that the statement imputed to you and denied by the plaintiff was a matter of no moment or otherwise? Answer me, yes or no."

The witness looked bewildered. "Yes or no what?" he finally managed to gasp out.—Youth's Companion.

Legal brethren. "Gabe," said the lawyer to the amazed negro witness who had been listening to a heated discussion as to the admissibility of certain testimony, "you have followed carefully this intricate discussion touching on the various aspects of medical jurisprudence involved in the issues we have before us for adjudication, and in view of that I now desire to know the theory advanced by my learned brother."

The witness cast a triumphant side glance at his own attorney. Then he puffed out his lips and his chest. "Most doubtless," he answered.—Everybody's Magazine.

He waited too long. The poor weeping woman stood before the judge, and the sympathies of the spectators went out to her. She looked muscular, but so miserable.

"You are charged," said the magistrate sternly but kindly, "with assaulting your husband."

Gulping down her sobs, the prisoner wiped away her tears with a brawny hand and replied sadly:

"Yes, your Worship. I only asked the brute if he would ever cease to love me, and he was so long in answering that I

hit him in the eye with a broom. I'm only a defenseless woman," she went on in broken voice, "and a woman's life without love is a mere blight."—Answers.

Not guilty. Gap Johnson of Rumpus Ride, Arkansas, leaned languidly over the top rail of his fence and gazed pensively at a hog lying in the road. A motor car came skally-hooting down the hill and ran over the recumbent porker. Something went wrong with the mechanism, the car swerved from the highway, plunged down into a considerable hollow, and landed wrong side up with the occupants unconscious beneath it. Mr. Johnson presently strolled over and looked calmly down into the pit.

"Say," he finally called. "You folks don't have to hide under there. That hog was dead when you hit it. The last automobile that came along killed it, and the feller paid for it."—Minneapolis Journal.

Forcing the pace. George Gordon, an old man of miserly habits, was dying. By the time the lawyer arrived the old man was rapidly sinking, but the will was smartly drawn up and duly awaited his signature. He was propped up in bed, and managed to write, "George Gor," then he fell back exhausted.

An eager relative who stood by seized the pen and stuck it in the dying man's hand.

"Oh, Georgie, "d,'" he urged, referring to the next letter of the signature.

The old man glanced up wrathfully.

"Dee!" he exclaimed. "I'll dee when I'm ready, ye avaricious wretch!"—St. Louis Post.

Wifely devotion. Dinah Snow was a colored cook in the home of Smith. One morning on going to the kitchen Mrs. Smith noticed that Dinah looked as if she had been tangled up with a road roller. "Why, Dinah!" exclaimed she. "What in the world has happened to you?" "Was me husban'," explained Dinah. "He done went an' beat me ag'in, an' jes' fo' nothin', too!" "Again!" cried Mrs. Smith, with increasing wonder. "Is he in the habit of beating you? Why don't you have him arrested?" "Been thinkin' of it seberal times, missy," was the startling rejoinder of Dinah, "but I hain't nebah had no money to pay his fine."—Union and Advertiser.

Steady habits. When Senator William Hughes, of New Jersey, was a judge in Paterson he was presiding at a trial in which a woman who kept a boarding house was trying to establish an alibi for a boarder. The man was accused of a crime committed at 2 o'clock in the morning, and she swore he was at home at 1 o'clock on that morning.

"How do you know?" asked the cross-examiner.

"Why, he always comes in at 1 o'clock. He doesn't vary five minutes in the year."

"And you heard him that morning?"

"Yes, sir."

"And you are sure it was 1 o'clock?"

"Yes, sir, it was 1 o'clock exactly."

"Did you look at the clock?"

"Yes, sir."

"But," persisted the lawyer, "if he always comes in at 1 o'clock in the morning, why did you look at the clock on this particular morning?"

"Perhaps," said Judge Hughes, "she wanted to see whether the clock was right."—Saturday Evening Post.

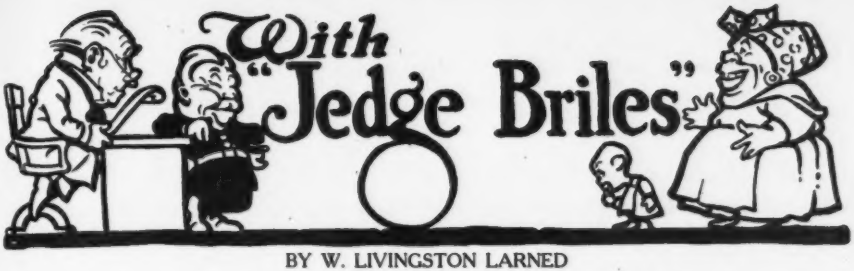
No defense. A western community elected the local undertaker trial justice, chiefly because he had more leisure than any other citizen; but the new judge took his position very seriously and soon made a record of never discharging any accused person who was unfortunate enough to be brought before him.

Not long ago a prisoner was arraigned, charged with forgery.

"Well, Jim Brown," snarled the judge, "what have you got to say for yourself? Are you guilty or not guilty?"

"Why, judge," answered the prisoner, "course I'm not guilty. Why, you know yourself I can't even write my own name."

"Nothing to do with it," barked the judge. "You're not charged with writing your own name. I hold you for the grand jury."—Harper's Magazine.



BY W. LIVINGSTON LARNED

(Note.—Perhaps the most famous judge in the whole South presided in an Atlanta, Georgia, court, where dozens of cases came up daily. He was lovingly known as "Jedge Briles" by his ever-changing audience, and while it was his stern mission and duty to administer punishment, as well as justice, erring ones were devoted to him just the same. Judge Broyles' court is rich in stories, and it is from this picturesque scurce that a countless number of thoroughly authentic anecdotes have come. Judge Broyles is now a member of the court of appeals.)

Jedge Briles Holds Christmas Court

His Worthy Cause. "Wash Jackson."

"Yes, yo Honah."

"Officer Morgan charges you with stealing a mink boa."

"I tuck hit, Jedge, but dey warn't no REAL stealin' in-vol-ved."

"But the boa was found on you, Wash."

"Jes' borrered, Jedge, mah chuch ax me ter play Santa Claus at de festivil and I hadder hab som' whiskers."

It Wasn't Petty Larceny. The big, flat-footed, hungry negro was up for theft.

"I caught him nippin' a fresh-made pumpkin pie from the MacCregor house on Marguerite street," explained Officer Carey.

"Did you?" demanded the judge.

A Case of "Justifiable Adoption"

"Dat's a rough word, yo' Honah—sayin' I done stole hit. Now as ter de truf'—dat punkin pie was settin' dar on de winder ledge, abandoned, Jedge. Nobody nowhar nigh hit, Jedge. Hit wuz a case ob 'justifiable adoption', brought on by de Chrismus sperrit."

Friendship for the Judge. His Honor was surprised and grieved to see before him an old slavery-time darkey who had worked on a friend's plantation for many years. The prisoner had never been in court before to anyone's knowledge.

"Whut dey bring me in heah fer, enyhow, Jedge," whined the negro?

"You are accused of locking a pig up over night, in the Marietta Colored Baptist Church," said the Judge, with a twinkle of amusement in his eye, "are you guilty?"

"I druv dat young hawg inter de vestybule . . . yas suh. . . . Judge, but hit wuz'nt durint no sermon. I done wait 'till all de suvvices am ovah."

"But what in the world possessed you to incarcerate a pig in a church."

Drove the Hawg Right into Church!

"Jedge, did dat officer say I done sech a thing ter de hawg? No suh—no such

—de fac's er de case am dis—Chrismus wuz so near, Jedge, and dey is so many thievish niggahs aroun' mah place, dat I 'lowed de onliest way I could save dat hawg frum bein' cooked, with a apple in his mouf an' dressin', wuz ter hide him somewhar 'till Chris'mus am ovah. I 'lowed nobuddy would think ob lookin' fo' him in chu'ch. An' . . . an' besides, Jedge . . . dat wuz a very young pig . . . he wuzn't ol' enuff fo' ter take keer ob hisself."

His Mexican Policy. Erastus Phinney, black, thirty-two, and in uniform, stood before the judge. He bore the marks of recent battle, but smiled pleasantly through two or three stitches and a yard or so of courtplaster.

"Charged with assaulting five men at a dance," said the Judge. "What have you to say, Erastus? Is that the way to celebrate the holidays?

"I suttenly did razor dem coons," admitted the prisoner.

"You're just back from Mexico, too, I understand."

"Yas, suh, yo Honor."

"Have you no respect for your country or your flag?"

"Now, listen, Jedge, dem things didn't hab nuthin' ter do wid hit at ALL. I went ter dis dance an' mah unifo'm done attract de ladies. Dey des flocked an' dey flocked. Dat's whut made dem yeller no 'counts mussy. Dey jealous,

Jedge. I done took fo' han'some gals ter de ice-cream counter and den de trubble begin."

"But you invited it, didn't you?"

"No, yo' Honah! Hit des' follered us ter de ice cream. Den one a dem chocolate coons said: 'Niggah, yo is de las' drop er sweat off'n de las' candle, and it's kaze yer tongue is a wick dat makes yo' sputter when yo' talks. An' dat wuz whar de razor wuz drawn yo' Honah."

A Purely Political Reason. It was the day following 'Xmas, and Peter Anderson was before the Court for being "drunk and disorderly."

"Peter," said Jedge Briles, "Can't you realize that Christmas time is the last time in the world for riotious conduct? It's a purely religious occasion. Christmas and drink do not go together. Why is it that a man can't enjoy the good things of the Holiday period without ———."

The accused suddenly interrupted.

"Wait Jedge—wait," he said, "dey ain't no use ob yo' wastin' all dem fancy words. Crismus didn't hab nuthin' ter do wid me an' mah drinkin'. Hit dates back ter de 'lection not goin' ter suit me."

His Honor Was Impudent. "Mammy" Lucy had been with one family for twelve years. It was her weakness to take a little something from the ice box every once in a while, her mistress explained, but the climax had come on Christmas Day. That night, after finishing her work, Mammy Lucy had passed through the front hall with a covered basket on her arm. She was asked to explain, and it soon developed that the negress was taking enough "goodies" home to stock her pantry for a week.

"You ought to be sent up for a good spell," said the Judge. "The idea of treating your friend and mistress in any such fashion. Why is it that the best of you niggers WILL steal."

"Don't call hit dat, Jedge!" Mammy protested, holding up her hands in horror.

"If it isn't theft—what is it?" His Honor thundered back.

"Jedge," the old negress responded, "Miss Nettie, she'll tell you dat she don't min' me takin' a little bit heah an' a little bit dar, ez de weeks go by. I got er sick husban' at de house. Well, Jedge—I aint been takin' dat little bit heah an' little bit dar fer fo' weeks runnin' now, so ez I could git hit all t'wunct at Chrusmus!"

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